



C.M.A.No.1307 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1307 of 2016
and C.M.P.No.10053 of 2016

The Oriental Insurance Co. Ltd.,
No.17-A, Krishnagiri Road,
SKS Complex,
Ranipet, Vellore District.

... Appellant

Vs.

1.Samikannu
2.D.Saravanan

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgment and Decree dated 28.01.2016 passed in M.C.O.P.No. 501 of 2013 on the file of the Motor Accident Claim Tribunal (Special Sub-Judge), Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents

For R1 : No appearance

For R2 : Mr.J.Titus Enock



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J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal (Special Sub-Judge), Krishnagiri, in MACT O.P.No.501 of 2013.

2. The Insurance Company is the appellant herein, preferred the above appeal challenging the award of the Motor Accident Claims Tribunal (Special Sub-Judge), Krishnagiri, in MACT O.P.No.501 of 2013 on the ground of liability.

3. It is the case of the claim petitioner that on 13.10.2010 at about 10.00 p.m., when the claim petitioner was travelling in a Swaraj Mazda van bearing Regn.No.TN-23-AP-2171, with vegetables with some others from Krishnagiri to Chennai, driven by its driver in a rash and negligent manner, near Leprosy Rehabilitation Illam, Bargur, rear tyre of the van burst out and the said vehicle lost control and dashed against the road side wall, due to which, the said vehicle capsized. Hence the accident occurred, due to which, the claim petitioner fall down from the top and sustained multiple injuries on his all over



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the body. Hence the claim petition.

4. The 2nd respondent herein-owner of the Swaraj Mazda van remained exparte before the Tribunal.

5. The appellant-Insurance Company filed separate counter statement and denied all the averments made by the claim petitioner. According to the appellant, the accident has not occurred as alleged by the claim petitioner. According to the appellant, due to poor maintenance of the vehicle by the 2nd respondent herein, the tyre of the vehicle got burst and also due to the rash and negligent driving of the driver of the lorry, the accident occurred. Hence, the appellant is not liable to pay any compensation to the claim petitioner. The driver of the Swaraj Mazda van belonging to 2nd respondent herein was not possessing valid driving license and the said van was not insured with the appellant at the time of accident. In any event, the quantum of compensation claimed by the petitioner are highly excessive and prayed for set aside the award of the Tribunal.



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6. Before the Tribunal, on the side of the claim petitioner, P.W.1 was examined and Ex.P1 to Ex.P4 were marked and on the side of the respondents no one was examined and no document was marked.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the Swaraj Mazda van belonging to 2nd respondent herein and the appellant, being the insurer of the 2nd respondent vehicle, was directed to pay the a sum of Rs.20,000/- along with 9% interest per annum. Aggrieved by the same, the appellant-Insurance Company has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that at the time of accident, the driver of the Swaraj Mazda van belonging to 2nd respondent herein did not possess valid and effective driving license to drive the vehicle. The 2nd respondent herein has committed breach of policy condition by permitting the driver to drive the vehicle without license and to carry passengers in the goods vehicle. The petitioner traveled as unauthorized



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passenger by sitting on the goods in the open space. The Tribunal ought to have exonerated the appellant and fastened the liability on the 2nd respondent-owner of the offending vehicle and prayed for allowing the appeal.

9. It is seen from the records that according to the 2nd respondent herein at the time of accident there was valid insurance policy in force for the 2nd respondent's van and the Tribunal rightly directed the appellant to pay the compensation to the claim petitioner and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the entire materials on record.

11. On perusal of records it is seen that on 13.10.2010 at about 10.00 hours the petitioner along with othes traveled with Vegetable bags from Krishnagiri to Chennai in the offending vehicle. The driver of the van drove the same in a rash and negligent manner and due to the same, the rear tyre of the said van got burst and the vehicle capsized. Due to the said impact, the



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petitioner fall down from the van and sustained grievous injuries. Hence, the the claim petitioner filed the above said claim petition claiming compensation.

12. In support of his case, he examined as P.W.1 and marked F.I.R. as Ex.P1. On the other hand, it is the case of the appellant that the 2nd respondent-owner of the lorry has not insured the lorry with the appellant and the driver of the van was not possessing driving license at the time of accident and the accident occurred only due to poor maintenance of the vehicle and generally denied all the averments made in the claim petition. The appellant has not let in any oral or documentary evidence to prove their case. In the appeal, the appellant has raised grounds that the petitioner and others, who travelling in the vehicle are gratuitous passengers as they traveled in the goods vehicle sitting above the goods in open space and at the time of accident, 8 persons traveled in the goods vehicle. No such stand was taken by the appellant in the counter statement and no evidence was let in to prove that the deceased was sitting on the goods and also 8 passengers traveled in the goods vehicle at the time of accident. The appellant is not entitled to raise new grounds without pleadings in the counter statement. Further the appellant has not let in any evidence in



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support of their case. The appellant in the grounds of appeal stated that the petitioner was travelling by sitting over the goods. The Tribunal considering all the materials placed before it held that accident has occurred only due to rash and negligent driving by the driver of the 2nd respondent herein and the appellant failed to prove that the driver of the 2nd respondent's vehicle did not possess valid driving license and insurance policy issued by the appellant was in force and directed the appellant to pay the compensation. The appellant without any pleadings, now cannot raise new ground that the petitioner is the gratuitous passengers.

13. For the above reason, the Civil Miscellaneous Appeals is dismissed and the compensation awarded by the Tribunal at Rs.20,000/- together with interest and costs is hereby confirmed. The appellant is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.501 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge), Krishnagiri. On such deposit, the claimant is permitted to withdraw the award amount along with interest and



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costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
The Motor Accident Claim Tribunal,
(Special Sub-Judge)
Krishnagiri.

A.A.NAKKIRAN.J.



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