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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.06.2023

PRONOUNCED ON: 07.09.2023

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THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2270 of 2012

and

M.P.No,1 of 2012

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.46, Big Street, Tiruvannamalai.

... Appellant

Vs

1. Palani

2.Malick Sayabu

... Respondents

(2nd Repondent herein was set exparte before the lower Court)

Prayer: This Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.07.2011 made in MCOP No.211 of 2008 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Tiruvannamalai.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Not Appeared

**JUDGMENT**

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This Civil Miscellaneous Appeal is filed by the insurance company challenging the award directing the insurance company to indemnify the owner of vehicle, passed in MCOP.No.211 of 2008 dated 29.07.2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

2. On 30.05.2006, the claimant Palani was travelled in the Auto bearing Regn.No.TN-23-J-6901 as an employee of the respondent No.2 after loading the goods at Salaimedu around 09.00 p.m and due to the negligent driving of the Auto by the Driver, it was capsized in caused injuries to the claimant herein. A criminal case was registered against the auto driver in Cr.No.229 of 2006 under Sections 279, 338 of IPC on the file of the Kaladi Police Station.

3. The owner of Auto remained exparte before the Tribunal and has not contested the claim petition.



4. The Appellant insurance company has filed counter denying the manner in which the accident had taken place and disputed the injuries, income and disability sustained by the claimant. It is further contended that First Information Report was registered only after two days from the date of occurrence and this vehicle was falsely implicated in this case. In the medical records, it is stated that the claimant has sustained injuries while travelling in the mini bus, hence no compensation shall be paid by the insurance company and prays to dismiss the claim petition.

5. Based on the evidence placed on the records, the Tribunal in point Nos.1 and 2 has held that injured has travelled in the goods vehicle as a loadman, and there is no violation of the policy conditions. Hence the appellant is liable to indemnify the owner of vehicle to pay the compensation. In point Nos.3 and 4 the Tribunal has quantified the compensation and directed the respondents to pay a sum of Rs.2,05,000/- as compensation to the claimant.



6. Aggrieved over the direction to indemnify the first respondent, the insurance company has filed this Appeal on the ground that injured was not travelled in a vehicle as loadman, hence he shall be classified as an unauthorised passenger.

7. Learned counsel for the insurance company has submitted that the claimant has stated in the hospital that he sustained injuries in the accident involving mini bus, subsequently FIR was registered as if, he sustained injuries while travelling in Auto. In the evidence of claimant he has categorically stated that share auto is a passenger auto which is not insured with the respondent herein and there is a discrepancy with regard to identification of the vehicle, Tribunal ought not to have accepted the case of the claimant that he has travelled in the goods vehicle as a loadman.

8. Per contra, learned counsel for the claimant submitted that at the time of recording accident register, the identity of the vehicle was not described properly. Instead of recording as mini goods vehicle, it has been recorded as mini bus. However it has been categorically explained in the



evidence that the injured has sustained injuries while travelling in the Auto three wheeler and the claimant has described the same as share auto i.e, three wheeler passenger vehicle, but it was not a passenger vehicle, it is goods vehicle which was not known to the claimant, hence wrong description of the vehicle does not mean vehicle insured with the respondent herein has been falsely implicated in this case. He further contended that no other vehicle involved in the accident except mini auto and the second respondent herein is not having any three wheeler passenger vehicle or mini bus and prays to confirm the award.

9. I have considered the submissions made by both sides and perused the records.

10. It is the specific case of the claimant that while he was working under the second respondent herein as an employee, on 03.05.2006, he travelled in the share auto bearing Regn.No.TN-23-J-6901, after loading of goods from Polur Town and to transport the same to Salaimedu. At about 09.00 p.m, the auto reached near Perumal Temple circle suddenly capsized



due to high speed and negligent driving of the driver of the auto. Due to the impact, his left hand was fractured and he was taken to the CMC Hospital, Vellore for treatment and he has also stated that accident had occurred only due to the negligent driving of the driver of the auto. In Ex.P1/FIR, it is stated that claimant was travelling in the Auto Mahendra Champion bearing Regn.No.TN-23-J-6901 a three wheeler driven by one Karunakaran in high speed in negligent manner and caused accident.

11. To disprove the evidence of P.W.1, the respondent insurance company has examined R.W.2 insurance officials who has stated that in the discharge summary is used by the hospital it is recorded that claimant has sustained injuries while travelling in the mini bus and no such mini bus was insured with their office. On the side of the respondent they have also examined the Doctor /Deepak Willam from CMC hospital as R.W.2 to corroborate the evidence of R.W.1, the Tribunal has not appreciated the evidence of R.W.1 and R.W.2, while recording its conclusion. Admittedly they are eye witness to the occurrence and their evidence is not sufficient to dispose the evidence adduced on the side of the claimants for the facts



relating to manner of accident. In this case, the claimant have examined Driver of Auto as P.W.3 to corroborate the evidence of claimant. Driver of Auto has stated that police investigated the case against him filed final report against him and he has also admitted his guilt and paid the fine. This evidence shows that the police have conducted investigation regarding the accident and filed final report which ended by conviction. Under the said circumstances, this Court is of the opinion that the wrong mentioning of the description about the vehicle in the medical record alone is not sufficient to reject the contention of the claimant. Admittedly, there is no evidence to show that the second respondent herein is having another vehicle. Under the said circumstance, this Court is of the view that the Tribunal has rightly held that claimant has sustained injuries while travelling in the three wheeler belongs to the second respondent herein bearing Regn.No.TN 23 J 6901.

12. The next contention raised by the insurance company is that claimant has travelled as a gratuitous passenger and therefore, the claimant is not entitled for any compensation. On a perusal of the Ex.R6, the policy



copy shows that workmen of the owner of vehicle is having valid policy coverage and claimant herein as a workman is covered by the insurance policy and accordingly he is entitled to get compensation.

13. In view discussions made above, there is no merits in the appeal filed by the insurance company and accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Index : Yes/No
Internet : Yes/No

07.09.2023

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To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate),
Tiruvannamalai.

2.The Section Officer,
VR Section, Madras High Court.



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K.RAJASEKAR, J.

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