



C.M.A.No.3756 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06..2023

C O R A M

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3756 of 2011

AND

M.P.No.1 of 2011

United India Insurance Company Ltd.,
64, Armenian Street,
Chennai-1.

..Appellant

Versus

1.Sankar
2.G.Munivel

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2010 made in MCOP.No.1508 of 2008 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes) Chennai.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : Mr.P.Chinnaraj for R1
No appearance for R2

J U D G M E N T

The Insurance company has filed this appeal against the Judgment and decree in MCOP.No.1508 of 2008 dated 21.12.2010 on the file of the



C.M.A.No.3756 of 2011

Motor Accident Claims Tribunal (V Court of Small Causes) Chennai

questioning the liability on its side.

2. The facts of the case briefly are as under:

On 08.09.2007 at about 16.30 hours, when the first respondent/claimant was travelling in a Tractor bearing Regn.No.TN-69-Z-2508 owned by the second respondent and insured with the appellant, driven by its driver in a rash and negligent manner in S.M.Nagar, Main Road from South to North direction and caused the jolting, due to which, he sustained injuries in the right leg and left knee. In view of the said accident, the claimant has filed a claim petition in M.C.O.P. No.1508 of 2008 seeking for compensation of Rs.2,50,000/- before the Tribunal.

3. After trial, the Tribunal has awarded a sum of Rs.2,23,200/- to the claimant as compensation directing the Insurance company to deposit the said compensation before the Tribunal. Being aggrieved over the aforesaid award, the Insurance Company has filed the present appeal seeking for exoneration from the liability.



C.M.A.No.3756 of 2011

4. The learned counsel for the appellant would submit that the Tribunal ought to have exonerated the Insurance Company from the liability in paying the compensation on behalf of the owner of the offending vehicle since the owner of the offending vehicle has violated policy condition. He further submitted that the Order of the Tribunal is contrary to law, weight of evidence and against all the probabilities of the case. The Tribunal erred in holding that the appellant is liable to pay compensation without noticing that the injured person was seated on the Tractor in which, except driver, there is no space for any other person to be seated. It failed to note that the claimant was sitting on the right side mud guard which is contrary to permit and policy conditions. It has failed to appreciate the FIR and the admission of the appellant to decide the liability and failed to appreciate the rulings of Apex Court. In any event, the Tribunal has erred in awarding disproportionate compensation under various heads which are legally and factually unsustainable. He further submitted that the appellant / Insurance Company has already deposited the entire award amount before the Tribunal. Hence, he prays to set aside the award of the Tribunal.



C.M.A.No.3756 of 2011

5. On the contrary, the learned counsel for the first respondent would submit that the Tribunal has rightly awarded the compensation based on the oral and documentary evidences. Hence, the order of the Tribunal does not warrant any interference at the hands of this court.

6. Heard the learned counsel for the appellant as well as the learned counsel for the first respondent and perused the entire documents produced before this Court.

7. On perusal of evidence of PW1, it is revealed that the driver of the offending vehicle is the cause of the accident and the same is also supported by Ex.P2 Sketch. It is also seen that the claimant was seated on the right side mud guard negligently and carelessly without any balance and fell down and claimed compensation for the injuries sustained. The Tribunal without properly appreciating the M.V.Act and evidence has fastened the liability on the appellant. The driver of the offending vehicle has not entered the witness box. It is seen that the claimant ought not to travel as a passenger in the offending vehicle, which has not been authorised to carry the persons as a passenger. On the contrary, the claimant had travelled as



C.M.A.No.3756 of 2011

against the terms and conditions stipulated in the above said type of vehicle.

Hence the appellant is not liable to pay any compensation to the claimant.

8. In support of his contention, he relied on the decision of this court made in CMA.No.3817 of 2011 dated 15.02.2021 wherein it is held that the deceased travelled sitting on mudguard of the Tractor which cannot be used for carrying passengers as Transport vehicle. Therefore, owner of the vehicle, is liable to pay compensation to the respondents/claimants.

9. This decision is squarely applicable to the present case on hand.

10. In the case on hand, the Tractor in which the claimant was travelling is a goods vehicle and is not to be allowed to carry passengers according to the policy condition. Moreover, there is no seating capacity for the passengers in the said offending vehicle whereas the driver of the offending vehicle has allowed the claimant on the aforesaid vehicle to be travelled which is meant for carrying goods material and commercial purpose. Hence, there is a breach of policy condition since the claimant has travelled in the offending vehicle as a passenger on the mudguard.



C.M.A.No.3756 of 2011

WEB COPY

11. In view of the aforesaid facts, it is made clear that the owner of the vehicle has violated policy condition and has not paid any additional premium for carrying the passengers. Without considering the aforesaid aspects, the Tribunal has fixed the entire liability on the appellant/Insurance Company stating that the appellant is the insurer of the the offending vehicle and is alone liable to pay the compensation which is erroneous in the considered opinion of this court.

12. Upon considering the aforesaid facts and circumstances of the case, there is no doubt that if the Insurance Company has no liability to pay at all on the fault of the owner of the vehicle, then, this Court is of the considered view that it cannot be compelled to pay the compensation on behalf of the owner of the vehicle when the Insurance company has proved that the owner of the vehicle has violated the policy condition. When this being factum that the accident had occurred due to rash and negligent driving of the offending vehicle and the violation of the Insurance policy on the side of the owner of the vehicle, imposing liability on the Insurance Company to pay compensation to the claimant is erroneous. Hence, the



C.M.A.No.3756 of 2011

Insurance company is hereby exonerated from the liability to pay compensation on behalf of the owner of the offending vehicle. Further, the claimant is at liberty to seek for compensation from the owner of the vehicle.

13. In the result, the appeal is partly allowed only exonerating the Insurance company from paying the compensation on behalf of the owner of the vehicle. Other terms of the award shall remain the same. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.06.2023

Index:Yes/No
Internet: Yes/no
Speaking/Non-speaking Order

gv



WEB COPY



C.M.A.No.3756 of 2011

A.A.NAKKIRAN.,J.

gv

To

- 1.The Motor Accident Claims Tribunal
(V Court of Small Causes) Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.3756 of 2011
AND
M.P.No.1 of 2011

08.06.2023