



C.M.A.No. 3609 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HON'BLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No.3609 of 2013

and

M.P.No.1 of 2013

IFFCO TOKIO General Insurance Co., Ltd,
No.28, North Usman Road,
T.Nagar, Chennai – 600 017.

... Appellant

Vs.

1. Radhakrishnan

2. C.Jaiganesh

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree in M.C.O.P.No.2605 of 2006 dated 18.12.2012 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.E.Rajadurai
for Mr.M.B.Gopalan

* * * * *



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JUDGEMENT

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2. The appellant is the second respondent in M.C.O.P.No.2605 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore. The 1st respondent herein filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.08.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Mahindra minidor champion bearing Registration No.TN 51 C 4093, which is owned by the 2nd Respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.95,400/- as compensation to the 1st respondent/ claimant at the first instance and recover the same from the second respondent herein, owner of the vehicle.



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4. Against the said award dated 18.12.2012 made in M.C.O.P.No.2605 of 2006 ordering pay and recovery, the appellant-Insurance Company has come out with the present appeal.

5. The learned counsel appearing for the appellant-Insurance Company contended that the deceased traveled in the vehicle as an unauthorized passenger. There was no coverage in the insurance policy issued by the appellant-Insurance Company for the persons who traveled as unauthorized passengers in the goods vehicle. The Tribunal ought to have exonerated the appellant-Insurance Company from its liability. The Tribunal erred in ordering pay and recovery, which is contrary to the decisions of the Hon'ble Apex Court and this Court. The compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the portion of the award directing the appellant-Insurance Company to pay the compensation at the first instance and recover the same from the 2nd respondent, owner of the vehicle.

6. Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.



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7. From the materials available on record, it seen that the deceased traveled along with others in the goods vehicle as unauthorized passenger. Ex.P.1, FIR reveals that the petitioner was travelled along with 14 others in the insured goods vehicle as unauthorized passenger, which is in violation of policy condition. As per Section 147 (1) of the Motor Vehicles Act, 1988, the Insurance Company is not liable to pay compensation for the persons who traveled as passenger in the goods vehicle. There is no coverage for the passengers in the goods vehicle. Even though the Owner and Insurer are not liable to pay compensation, the trial Court rightly observed as follows:

“ The Motor Vehicles Act is a Social Legislation and the victim need not be wait and strive to get the compensation from the owner of the vehicle. As such, the second respondent being the Insurer of the first respondent's vehicle shall pay the compensation and recover it from the first respondent.”



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8. In my considered view, I agree with the observation made by the trial Court. Hence the plea raised by the Insurance Company to set aside the “pay and recover” is hereby negatived.

9. As far as the quantum of compensation is concerned, the 1st respondent/injured contended that he is aged 45 years, was a fish vendor and was earning a sum of Rs.5,000/- per month. The Tribunal fixed a sum of Rs.4,000/- as monthly income and loss of future income was fixed for two months and awarded a sum of Rs.8,000/- towards loss of future income and awarded a sums of Rs.15,000/- Rs.5,000/- Rs.3,000/- and Rs.2,000/-, under the heads pain and sufferings, medical expenses, transportation charges and extra nourishment respectively and arrived total compensation at Rs.95,400/-. In my considered view, the compensation awarded by the Tribunal is just and reasonable and the same is not interfered with.

10. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.95,400/- as awarded by the Tribunal as compensation to the 1st respondent/claimant is hereby confirmed. The portion of the award passed by



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the Tribunal directing the appellant-Insurance Company to pay compensation to the 1st respondent/claimant at the first instance and recover the same from the 2nd respondent/owner of the vehicle is also hereby confirmed. The Appellant is directed to deposit the entire award amount, along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited, and thereafter recover the same from the 2nd Respondent. On such deposit, the 1st respondent is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal.

11. Resultantly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

28.04.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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