IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1344 of 2018
and
CMP.No.10783 of 2018

United India Insurance Co. Ltd.,
Divisional Office,
No.2, 104-A, Peramanur Main Road,
Salem-7. ...Appellant

Vs.

1. Prabhakaran
2. V.Palani
3. P.Sundararajan ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 11.10.2017 made in M.C.O.P.No.686 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-I), Salem.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.H.Manojin, for R1
: Notice Dispensed With, for R2 & R3, vide order dated 15.06.2023

JUDGEMENT

Aggrieved by the Judgement and Decree dated 11.10.2017 made in M.C.O.P.No.686 of 2013 on the file of the Motor Accident Claims Tribunal Motor Accident Claims Tribunal (Special Sub Judge-I), Salem, the appellant has come up with this Appeal.

2. The case of the appellant is that, the 1st respondent filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act'), claiming a compensation of Rs.7,00,000/-, alleging that, on 12.03.2013, at about 11.30 pm., the 1st respondent purchased Iron rods and while he was taking the same from Madurai to Salem on the NH 7 Road in a Eicher Van bearing Registration No.TN-27-D-6727, owned by the 2nd and 3rd respondents, insured with the appellant herein, as the driver of the said van drove the vehicle in a rash and negligent manner and dashed against the centre median, near Aravakurichi Aayup Lorry company, the van fell upside down, and as a result of which, the 1st respondent sustained grievous injuries all over his body and got admitted in the hospital. After contest, the Tribunal, vide impugned award fixed a

compensation of Rs.4,25,695/- payable to the 1st respondent jointly and severally by the appellant and the 2nd & 3rd respondents. Challenging the same, the appellant/insurance company is before this Court.

3. Learned counsel appearing for the appellant submitted that, for the above said accident, the F.I.R came to be registered as against the driver of the Eicher van, alleging that the said accident happened due to his rash and negligent driving, however, it is not the case and only due to overloading, the vehicle toppled and the accident happened. While so, the tribunal had fixed the entire liability only as against the appellant/ insurance company, instead of fixing the same on the owner of the vehicle. Further, as per the terms and conditions of the policy, the seating capacity of the Eicher van is only 2, however, at the time of accident, 5 persons have travelled in the above said van, which is a clear violation of policy conditions, and the insurance company is not liable to pay if there is violation of the policy conditions relating to carrying of persons in the vehicle. However, contrary to the same, instead of making the owner liable for the claim made by the 1st respondent, the Tribunal fixed the entire liability as against the appellant/insurance company, which is *per*

se illegal. Further, the tribunal had miserably failed to consider the fact that, the 1st respondent being a gratuitous passenger is not entitled to claim compensation from the appellant and more so, the driver does not posses valid driving license at the time of accident. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1st respondent submitted that, admittedly, the above said Eicher van is owned by 2nd & 3rd respondents and insured with the appellant and it is equally not in dispute that, at the time of accident, the 1st respondent travelled in the said van as a goods owner and clearly, the 1st respondent being the insurer of the van, is liable to pay compensation to the 1st respondent in terms of Section 147 of the MV Act, as the vehicle has been taken for hire. After considering all the relevant documents, the Tribunal has rightly fastened the liability on the 1st respondent, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the 1st respondent and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the appellant being the insurer of the Eicher van, in which the 1st respondent/claimant traveled at the time of accident, is liable to pay compensation to the 1st respondent.

7. It is the claim of the appellant that, as per the policy conditions, the seating capacity of the above said Eicher van is only 2, however, at the time of accident, 5 persons have traveled in the said van and only due to overloading the above said accident had happened, for which, the appellant cannot be made liable and only the owner of the vehicle viz., the 2nd and 3rd respondents are liable to pay compensation to the 1st respondent.

8. Though such a contention has been advanced and the FIR also reveals that 5 persons have travelled in the vehicle, however, the

said fact is not spoken to by any of the witnesses examined either on behalf of the claimant or on behalf of the respondents. Further, a perusal of the documents placed before this Court reveals that, neither the appellant nor the 1st respondent had produced the policy copy and without perusing the policy conditions, this Court cannot come to a exact conclusion that there was violation of policy conditions.

9. Without proving the policy conditions, the appellant cannot claim that the policy conditions stipulate that only two persons can be carried in the vehicle. Further, without admitting to the aforesaid contention, even if it is to be construed that the seating capacity of the vehicle is only two and the policy covers the risk of only 2 persons, it is even the admitted case of the parties that only two persons have made claim in respect of the above said accident. Such being the case, the appellant cannot divest his responsibility to compensate for the injuries sustained by the claimant without placing any materials on record to countenance his contentions. Therefore, in view of the above position, this Court does not finds any fault with the impugned award.

10. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal is dismissed. The appellant insurance company is directed the pay the entire compensation as awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

31.10.2023

skt
Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accident Claims Tribunal (Special Sub Judge-I),
Salem.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

skt

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