IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1612 of 2018
and
C.M.P. No.12831 of 2018

The Divisional Manager
The Oriental Insurance Company Limited
Vijayalakshmi Complex,
No.32/312, 13th Street, Phase-II,
Sathuvachari, Vellore ... Appellant

Vs.

1. Vijaya Manikandan

2. Venugopal ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP NO.408 of 2015, dated 13.07.2017, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court) Thiruvannamalai.

For Appellant : Mr.R.Prem Chander

For Respondents : Mr.S.Silambu Selvam

JUDGMENT

The above Civil Miscellaneous Appeal is filed by the Insurance Company against the Judgment and Decree in MCOP NO.408 of 2015, dated 13.07.2017, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Thiruvannamalai.

2. The 1st respondent is the claimant. The 2nd respondent is the owner and the appellant is the insurer of the offending vehicle.

3. The case of the claimant is that he was working as a Driver under the 2nd respondent herein and was earning not less than Rs.4,500/- per month as salary and daily batta of Rs.300/-. On 29.05.2015 at about 00.40 hours, he drove the car bearing Regn. No.TN-25-J-1683 at the extreme left side of the road from Tiruchirappali towards Tiruvannamalai at the NH 45 National Highways Road with due care and caution. However, due to the slippery position of the road, the car lost its control and dashed against the centre median culvert on the middle of the road. Due to which, the claimant sustained fracture in his right knee, injuries on the lower lips and all over the

body. He was taken to the Government headquarters Hospital, Perambalur and then to SH Hospital, Tiruvannamalai, for further treatment. A case was registered by the Mangalamedu Police Station against the claimant who drove the car.

4. The claimant filed a claim petition in MCOP NO.408 of 2015, dated 13.07.2017, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Thiruvannamalai, claiming compensation of Rs.5,00,000/- for the injuries sustained by him against the owner and insurer of the said car stating that due to the injuries, he got permanent disablement.

5. Before the Tribunal, the 2nd respondent herein/owner of the car remained ex-parte.

6. In order to substantiate the claim before the Tribunal, on the side of the claimant, the claimant himself was examined as P.W.1 and 5 documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R1 besides, one Court document was marked as Ex.C1.

7. The Tribunal, after hearing the arguments on either side, awarded compensation of Rs.1,48,000/- with interest at 7.5% per annum from the date of petition till the date of deposit along with costs and the Insurance Company was directed to deposit the said award amount.

8. Aggrieved by the Award passed by the Tribunal, the Insurance Company has filed the present appeal before this Court.

9. The learned counsel for the appellant/Insurance Company submitted that the claimant is none other than the son of the 2nd respondent herein who is the owner of the said Car. The claimant did not possess valid driving licence at the time of accident and the accident occurred only due to the rash and negligent driving of the claimant. Since the claimant is the tort-feasor, the policy does not cover. Even in the claim petition, it is stated that that the owner of the vehicle who is the father of the claimant, himself has lodged a complaint against the claimant stating that the accident had occurred due to the rash and negligent driving of the claimant. Therefore, the claimant as a tort-feasor, is not entitled to get any compensation as the policy does not

cover the tort-feasor. The learned counsel further submitted that admittedly, it is an Act policy under which, the owner of the vehicle and his family members including his driver are entitled to get compensation, whereas, in this case, the claimant is the son of the 2nd respondent herein who is the owner of the vehicle and at the time of accident, the vehicle was not used for common use and it was used as a Tourist vehicle. Therefore, the policy does not cover. The Tribunal failed to properly appreciate the oral and documentary evidence and awarded compensation. The learned counsel further submitted that Section 163(A) of Motor Vehicles Act would not applicable to the present case. The Tribunal has committed error and erroneously awarded compensation. The quantum of compensation is also highly exorbitant and it does not reflect the "just compensation" and that the Tribunal has adopted multiplier method which is not correct. Therefore, the Award passed by the Tribunal is liable to be set aside and the appeal has to be allowed.

10. Though notice was served on the 2nd respondent and name also printed, none appeared on behalf of the 2nd respondent. It is submitted by the learned counsel for the appellant/Insurance Company that the 2nd respondent

has also filed a separate claim petition against the appellant/Insurance Company and the same is pending.

11. The learned counsel for the 1st respondent/claimant submitted that the accident had occurred due to the damages in the road and there was no rash and negligent driving on the part of the claimant. The claimant was working as a Driver under the 2nd respondent and therefore, the policy covers the claimant and the Tribunal rightly appreciated the evidence and awarded compensation. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

12. Admittedly, the offending vehicle is a Tourist vehicle which belongs to the 2nd respondent herein. At the time of accident, the 1st respondent/claimant was driving the said vehicle. Even the evidence of P.W.1/claimant and the FIR clearly shows that the said vehicle dashed against the Center Median and no other vehicle is involved in the accident. Further, the FIR clearly shows that the accident had occurred due to the rash and negligent driving of the claimant. However, the claimant has not filed any complaint. Though the claimant admitted that at the time of accident, he was

driving the said vehicle and by profession he is a Driver, he has not produced any driving licence. Further, though in the proof affidavit, the claimant/P.W.1 has stated as if, the 2nd respondent is a 3rd party and not revealed about any relationship between them, during the course of cross examination, he has admitted that the 2nd respondent is none other than his father and the said vehicle belongs to his father. Further, it is seen that the 2nd respondent/father of the claimant has also travelled in the said vehicle at the time of accident and the 2nd respondent/father of the claimant himself has filed the complaint against his own son/claimant.

13. Under these circumstances, it is clearly proved that the 1st respondent/claimant is the tort-feasor. Though in the petition under Section 163(A) of Motor Vehicles Act liability need not be proved, in this case, since the claimant himself is the tort-feasor to the accident, policy does not cover him and therefore, the claimant is not entitled for compensation. The 2nd respondent who is none other than the father of the claimant himself has stated that due to rash and negligent driving of his son/claimant, the accident had occurred. However, the Tribunal has erroneously awarded compensation and fixed the liability on the appellant/Insurance Company. This Court finds

that there is perversity in the appreciation of evidence by the Tribunal. Therefore, the Award passed by the Tribunal is liable to be set aside.

14. Accordingly, the Award passed by the Tribunal in MCOP NO.408 of 2015, dated 13.07.2017, on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Thiruvannamalai, is set aside.

15. The appellant/Insurance Company is permitted to withdraw the amount if any deposited by them before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

23.08.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal
(Special Subordinate Court) Thiruvannamalai.

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

P.VELMURUGAN. J.

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C.M.A. No.1612 of 2018

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