IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1222 of 2019
And
C.M.P.No.3387 of 2019

The Branch Manager,
Oriental Insurance Co. Ltd.,
8-1-2010, P.H.Road,
Opposite District Court,
Chittoor,
Andhra Pradesh. ... Appellant

Vs.

1.Saraswathi
2.M.Nagaraj ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.1806 of 2013 dated 30.08.2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : Mr.C.Prabakaran for R1
R2 – Not Ready Notice

JUDGMENT

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 30.08.2013 passed by the Motor Accidents Claims Tribunal Special Sub Judge, Krishnagiri, in M.C.O.P.No.1806 of 2013.

2.The brief facts of the case is that on 29.10.2010, at about 10.30 a.m., the first respondent along with the other villagers were proceeding in a Tractor bearing Registration No.AP-03-AH-1344 as a coolie for digging soil. When the Tractor was nearing Sowdeswaramma Temple, Naralapalli Village, a motorcycle came in the opposite direction and to avoid contact with the motorcycle, the driver of the Tractor applied sudden brake, due to which, the Tractor capsized and the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.7,42,400/- with interest at the rate of 6% p.a. from the date of petition till the date of realisation and proportionate costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the first respondent claim that she travelled in the vehicle owned by the second respondent and insured with the appellant as coolie, however, no additional insurance premium was paid and the policy is only Act policy and as per the policy only the owner of the vehicle and the driver of the vehicle are entitled to claim compensation as against the Insurance Company, however, the Tribunal fastened the liability as against the Insurance Company is not sustainable one. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Apex Court reported in ACJ 1999 [Mallawwa and others Vs. Oriental Insurance Company Limited and others], wherein, it was held that the Insurance Company is not liable for the death or injuries sustained by the persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

5.The learned counsel appearing for the first respondent/ claimant submitted that during the pendancy of the appeal, entire amount was deposited before the Tribunal and the first respondent has also withdrawn the amount. Hence, nothing survives for adjudication in this appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

7.The first respondent in her claim petition claim that on 29.10.2010, at about 10.30 a.m., she along with the other villagers were proceeding in a Tractor owned by the second respondent and insured with the appellant as a coolie for digging soil. When the Tractor was nearing Sowdeswaramma Temple, Naralapalli Village, a motorcycle came in the opposite direction and to avoid contact with the motorcycle, the driver of the Tractor applied sudden brake, due to which, the Tractor capsized and the first respondent sustained injuries.

8.The accident and the manner in which the accident happened are not disputed. The only dispute is that the policy is only Act policy and as per the policy only the owner of the vehicle and the driver of the vehicle are entitled to claim compensation as against the Insurance Company, however, the Tribunal inadvertently awarded compensation in favour of the first respondent and fastened the liability as against the Insurance Company.

9.This Court perused the Insurance Policy which was marked as Ex.P3 before the Tribunal and it reveals that the appellant has collected additional premium for driver, conductor and cleaner. In the present case, the first respondent claim that she travelled as a coolie in the vehicle owned by the second respondent and hence she is entitled to claim compensation in the capacity as coolie as well as in the capacity of cleaner. The factual aspects were entirely discussed and considered by the Tribunal.

10.This Court perused Ex.P2 – Discharge Summary, Ex.P6 – Wound Certificate and Ex.P8 – Disability Certificate from which it is known that due to the accident, PTS and ROM caused on the claimant's hip portion, due to which, she is unable to sit, squat, walk fast and carry weights and is often getting chest pain, breathing trouble and unable to do her work as before. P.W.2 Doctor has assessed the disability as 70% disability on the ground that ICD insertion for the left chest was done for chest injury, exploratory laparotomy was done for her Haemoperitoneum, fracture of pubic rami with right SI joint disruption and non union of pubic ramus and caused pelvic diastasis. External fixator application for fracture pelvis was done.

11.Considering the injuries sustained by the first respondent, the amount awarded as compensation by the Tribunal, in the opinion of this Court is just and reasonable and warrants no interference. Further, during the pendancy of the appeal, entire amount has been deposited before the Tribunal and the first respondent has also withdrawn the amount.

12.In view of all the above, the civil miscellaneous appeal is dismissed. The judgment and decree dated 30.08.2013 passed by the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, in M.C.O.P.No.1806 of 2013, is confirmed. Liberty is granted to the appellant Insurance Company to recover the amount from the second respondent/ owner of the vehicle if there is any policy violation by filing appropriate suit as against the second respondent before the competent civil forum.

13.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge, Krishnagiri.

M.DHANDAPANI,J.
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