BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.01.2023

Delivered On : 28.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.932 of 2014

The Oriental Insurance Company Limited,
Rep. through its Branch Manager,
Branch Office, TSM Complex,
R.S.Road, Palakkad, Kerala. . ... Appellant / 2nd respondent

Vs.

1.B.Saravanakannan ... 1st Respondent /Petitioner
2.M/s.ABT Industries Ltd.,
Rep. by its Branch Manager,
Automobile Division,
at Dindigul Main Road,
Vilangudi, Madurai – 625 018.
(R2 remained exparte before the
lower Court) ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.901 of 2010, dated 17.04.2014, on the file of the Motor Accidents Claims Tribunal cum II Additional Sub Judge, Madurai.

For Appellant : Mr.C.Karthik

For Respondents : Mr.R.Gowrishankar for R1

: Mr.R.Sundar Srinivasan for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.901 of 2010, dated 17.04.2014, on the file of the Motor Accidents Claims Tribunal cum II Additional Sub Judge, Madurai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.901 of 2010 , is as follows:-

On 09.03.2010, at about 03.30 pm., when the petitioner was travelling in a SFC rider bus, driven by its driver in a rash and negligent manner, hit against the bridge and the petitioner sustained injuries. He was admitted in Kovilpatti Government Hospital, then he was shifted to Madurai Government Rajaji Hospital. The petitioner sustained injuries and he prayed a sum of Rs.1,50,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.901 of 2010, is as follows:-

The averments contained in the petition are all denied as false. The accident has taken place only due to the negligence and carelessness of the Van driver, in which the petitioner was travelling. It was the Van that came in a high speed along the wrong side of the road and dashed against the bridge. Since the petitioner is a gratuitous passenger in a Demo vehicle, he is not entitled to claim compensation. The petitioner has to prove that the first respondent was having valid driving licence and that the first respondent was liable to pay compensation.

4. Three (3) witnesses were examined and Eight (8) documents were marked on the side of the petitioner. One (1) witness was examined and One (1) document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 1,10,500/- as compensation to be paid by the second respondent – Insurance Company.

5. Against the award, the appellant- Insurance Company has filed this Appeal on the following grounds:-

The Doctor has deposed that the claimant was having 35% of disability, but, there was no evidence whether the disability is permanent or partially permanent in nature. Trade Policy was granted only for the purpose of transporting the vehicle and that the vehicle was not at all registered, trade policies are given, only to facilitate the dealer of the motorvehicle to transport the new vehicles. Only the risk of the driver was covered, there is no coverage for passenger or any of other third party. Under Clause 59-60 of the IMT, on payment of extra premium, it covers the use of the vehicle for demo purpose, any other occupant of the car is not covered under the policy. The claimant was not an employee and the claimant was not covered by the policy. The Insurance Company does not have any liability to pay any amount to the claimants.

6. On the side of the appellant, it is stated that the vehicle involved was not used for driving or transporting and that the vehicle was not registered. The insurance policy was a "Trade only policy" and that under the policy, the driver and the Co-employee were covered. There was no coverage for passengers in a demo vehicle. Even in the page No. 2 of the claim petition, the column for the name of the employer was kept blank. The vehicle was an unregistered new vehicle and the same was mentioned in Page No.3 of the claim petition. There was no proof that the claimant was an employee in the Company. Since the claimant was a gratuitous passenger, the order for pay and recover is wrong.

7. There is no appeal against the decision that the claimant is a gratuitous passenger. A judgment of the High Court of Karnataka at Bangalore reported in ***2012-ACJ-1584 (Mandovi Motors Pvt. Ltd. V. K.Ramu and others)*** is cited, wherein, it is stated as follows:-

> *"10. Even clause 60 of the IMT refers to a person, who has been permitted to use the vehicle for driving in case of demonstration. Naturally in case of demonstration, the vehicle is given to the intending buyer, who uses the vehicle for the trial purpose, such person's risk is covered. It is in these circumstances, clauses 59 and 60 have to be understood when it is a Tade Policy, particularly reference to the purpose, the scope of the policy cannot be enlarged only on the interpretation of domestic or pleasure. Scope of the clauses 59 and 60 of the IMT does not include the risk of the occupant of the car."*

8. On the side of the respondent, it is stated that even in the claim petition, it was specifically mentioned that the claimant was an employee of the Company. He was returning as an additional driver and that there was insurance coverage.

9. The driving licence of the claimant was marked as Ex.P7. There is absolutely no evidence that the claimant was not an employee of the ABT industries. The Insurance policy covers the driver and an employee. Since, the appellant failed to prove that the claimant was not an employee of the second respondent herein, it is decided that there is policy coverage for the claimant.

10. On the side of the appellant, it is stated that the Tribunal is wrong in awarding a compensation of Rs.70,000/- towards partial permanent disability, Rs.5,000/- towards transport expenses, Rs.4,500/- towards partial loss of earning, Rs.15,000/- towards extra nourishment, Rs.1,000/- towards damage to articles, Rs.15,000/- towards pain and sufferings.

11. P.W.3-Doctor has deposed that the claimant sustained 40% disability. Out patient note book was marked as Ex.P2. Disability certificate was marked as Ex.P3. X-Rays were marked as Ex.P4 to Ex.P6. Case sheet was marked as Ex.P8. The Tribunal fixed the disability at 35%, which is reasonable. For 35% disability, the Tribunal has awarded Rs.70,000/- as compensation. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.4,500/- towards partial loss of earning, Rs.1,000/- towards damage to articles, which is reasonable.

12. The Tribunal has awarded Rs.15,000/- towards extra nourishment, Rs.15,000/- towards pain and sufferings which are all excessive. He is entitled for Rs.10,000/- towards extra nourishment and Rs.10,000/- owards pain and sufferings.

13. The total compensation is calculated as follows:-

35% Disability	:	Rs. 70,000/-
Transport expenses	:	Rs. 5,000/-
Partial loss of earning	:	Rs. 4,500/-
Damage to articles	:	Rs. 1,000/-
Extra nourishment	:	Rs. 10,000/-
Pain and sufferings	:	Rs. 10,000/-
		....
Total compensation	:	Rs.1,00,500/-
		....

12. Since the claimant was not gratuitous passenger, the appellant is liable to pay compensation.

13. In the above circumstances, **this Appeal is partly allowed.**

(i) The compensation is reduced from **Rs.1,10,500/- to Rs.1,00,500/-**.

(ii) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.1,00,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. Excess amount, if any, shall be refunded to the appellant.

(iii) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount with interest and costs, on filing of proper petition before the Tribunal. The claimant is not entitled for interest for the default period, if there is any. No costs.

28.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal cum
II Additional Sub Judge, Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.932 of 2014

28.04.2023