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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.1288 of 2017
and CMP. No.6647 of 2017

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

Vs.

1. Palanisamy
2. R.Murugan ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2016 made in MCOP. No.2192 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.1) at Salem.

For Appellant : M/s.R.Sreevidhya

For Respondents : No appearance

JUDGMENT

This appeal has been filed seeking to quash the judgment and decree dated 19.07.2016 made in MCOP. No.2192 of 2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge No.1) at Salem.

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2. It is the case of the claimant that on 24.08.2013 when the first was travelling as a load man in a tractor bearing Reg. No.TN 27 Y 2797 owned by the second respondent and insured with the appellant, the driver of the vehicle applied sudden brake, the first respondent was thrown away, for which, he sustained injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the Tractor. Having rendered such a finding, the Tribunal proceeded to determine the total compensation payable at Rs.2,50,000/- under various heads in the following manner:

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Sl. No.	*Compensation awarded under the head*	*Amount (in Rs.)*
1.	Permanent disability	80,000
2.	Pain and sufferings	25,000
3.	Medical exp.	99,400
4.	Loss of amenities	15,000
5.	Loss of income	15,000
6.	Extra nourishment	3,000
7.	Transportation	2,000
8	Attendar charges	10,000
9	Damages for clothes	600
	Total	**2,50,000**

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. The Insurance company aggrieved over the award by the Tribunal, has filed the present appeal questioning their liability.

5. The learned counsel for the appellant submitted that the accident had happened only due to rash and negligent driving of the tractor and at the time of accident, the driver has no valid driving license.

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Due to careless of the claimant, he fell down from the running tractor. The seating capacity of the tractor is one person as per the policy condition. The premium will not cover for the first respondent who was seated in the mudguard. In the absence of any coverage, the Tribunal passed award by directing the insurance company to pay the compensation to the claimant which is unsustainable. Hence, this Court may quash the award passed by the Tribunal.

6. Heard the learned counsel for the appellant and perused the materials available on record. Though notice has been served on the respondents, there is no appearance on their behalf. Considering the pendency of the appeal, this Court is inclined to dispose the appeal.

7. The short issue that arises for consideration in the present appeal is as to whether the insurance company can be saddled with the liability. There is no dispute with regard to the fact that the injured was seated on the mudguard of a Tractor attached to a Trailer which was loaded with maize straw. Unfortunately, when the driver applied sudden break, the claimant lost his control, fell down from the vehicle and he

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sustained grievous injuries. In the light of these admitted facts, the main contention that was raised by the appellant that the insurance policy which was marked as Ex.R1 does not cover the person who traveling in the mudguard of a Tractor and it covers only the basic 3rd party risk.

8. It is quite clear from the above discussion that the insurance company cannot be mulcted with liability under the insurance policy and hence, the finding of the Tribunal to the effect that the insurance company must pay the compensation is liable to be interfered by this Court and the same is hereby set-aside.

9. The compensation fixed by the Tribunal can be claimed from the owner of the Tractor viz., the second respondent in this appeal.

10. In the result, this Civil Miscellaneous appeal is allowed and the liability that was fastened against the insurance company is set-aside. Any amount that was deposited by the Insurance company shall be permitted to be withdrawn with accrued interest. The compensation with accrued interest shall be recovered from the second respondent, who is

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the owner of the vehicle. The second respondent is directed to deposit the entire compensation amount with interest within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
rli

To

Motor Accident Claims Tribunal (Special Subordinate Judge No.1) at Salem.

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