IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.3325 of 2017

The Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
Divya Towers, II Floor,
No.15-1, Fort Main Road,
Salem-1. ... Appellant

Vs.

1. N.Mohan Babu

2. C.M.Gopal ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2017 made in MCOP. No.3330 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Krishnagiri.

For Appellant : M/s.M.Krishnamoorthy

For Respondents : No appearance

JUDGMENT

The appellant is the 2nd respondent in M.C.O.P.No.3330 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Krishnagiri. The first respondent has filed the said claim petition under

Section 163(A) of the Motor Vehicles Act, 1988, claiming a sum of Rs.4,00,000/~ as compensation for the injuries sustained in the accident that took place on 10.06.1998.

2. According to first respondent, on 10.06.1998 at about 09.30 A.M., while the deceased was proceeding in a Tractor bearing Registration No.AP 03 U 1652 and Trailor bearing Registration No.AP 03 U 1653 on Gudupalli Kuppam road near Gutharlapalli, the driver of the Tractor drove the same in a rash and negligent manner, due to which, the link rod got broken and trailer toppled down. In the impact, the first respondent sustained multiple grievous injuries all over his body. Therefore, the first respondent filed the said claim petition against the second respondent and appellant~Insurance Company, being the owner and insurer of the Tractor respectively.

3. The second respondent~owner of the Tractor remained exparte before the Tribunal.

4. The appellant~Insurance Company, insurer of the Tractor filed

counter statement and denied all the averments made by the first respondent. According to the appellant, the driver of the Tractor was not possessing driving license. As per Section 2(43) of the Motor Vehicles Act, the second respondent-s tractor is a goods carriage and at the time of accident, more than 15 persons traveled in the goods carriage as unauthorized passengers. Hence, the appellant is not liable to pay any compensation. The appellant denied the manner of accident. The first respondent has to prove the age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the first respondent are highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and 5 documents were marked as Exs.P1 to P5. The appellant~Insurance Company examined one witness as R.W.1 and marked 4 documents as Exs.R1 to R4.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that due to rash and negligent driving of the driver of the

tractor, the accident had happened and directed the appellant~Insurance Company to pay a sum of Rs.2,60,000/~ as compensation to the first respondent at the first instance and recover the same from the second respondent, owner of the Tractor.

7. Against the said award dated 11.07.2017 made in M.C.O.P.No.3330 of 2013, the appellant~Insurance Company has come out with the present appeal.

8. The learned counsel appearing for the appellant~Insurance Company contended that the Tribunal ought to have exonerated the appellant completely instead of ordering pay and recovery. The owner of the Tractor committed breach of policy condition by carrying more than 15 persons to travel in the goods vehicle as unauthorized passengers and prayed for setting aside the award of the Tribunal.

9. Though notice has been served on the first respondent, there is no representation on his behalf.

10. Heard the learned counsel appearing for the appellant~Insurance Company and perused the entire materials on record.

11. From the materials available on record, it is seen that it is the contention of the first respondent that the he has travelled in the second respondent-s tractor and accident occurred due to rash and negligent driving by the driver of the tractor trailer. To substantiate the same, the first respondent examined himself as P.W.1. According to the appellant, the first respondent along with 15 persons traveled in the tractor trailer as unauthorized passenger which is violation of policy condition. Therefore, the appellant is not liable to pay the compensation to the claimant.

12. The appellant relied on F.I.R. marked by respondents 1 to 6 as Ex.P1. From the materials on record, it is seen that the deceased and others were traveling in a tractor to Kuppam in Andhra Pradesh. The Tribunal considering F.I.R., held that at the time of accident, the deceased and others, totally 15 persons traveled in the tractor trailer as unauthorized passengers. Having held so, the Tribunal did not give any

finding whether appellant~Insurance Company is liable to pay the compensation for the death of an unauthorized passenger. On the other hand, the Tribunal without giving any finding with regard to liability of the appellant to pay the compensation to first respondent for the injuries of an unauthorized passenger, directed the appellant to pay the compensation at the first instance and recover the same from the second respondent on the ground that driver of the tractor did not possess driving license. The said finding is erroneous.

13. The award of the Tribunal directing the appellant to pay the compensation for the injuries sustained by the first respondent, who is an unauthorized passenger is erroneous and driver of the offending vehicle did not possess driving license at the time of accident. The said erroneous finding is liable to be set aside and it is hereby set aside. The Hon-ble Apex Court in the judgment reported in AIR 2020 SC 4453, *[Beli Ram Vs. Rajinder Kumar]*, held that for not possessing driving license, the Insurance Company is not liable to pay compensation to the victim. Therefore, the second respondent~owner of the tractor is liable to pay the compensation to the first respondent.

14. It is made clear that if any amount is deposited by the appellant~Insurance Company and the same was withdrawn by the first respondent, the appellant is not entitled to recover the same. However, the appellant is permitted to recover the amount only from the second respondent.

15.With the above modification, this Civil Miscellaneous Appeal is allowed and a sum of Rs.2,60,000/~ awarded by the Tribunal as compensation to the first respondent, along with interest and costs is confirmed. The second respondent~owner of the tractor is directed to deposit the award amount along with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3330 of 2013 on the file of the Motor Accidents Claims Tribunal, Krishnagiri. On such deposit, the first respondent is permitted to withdraw the award amount along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant~Insurance Company is permitted to withdraw the amount, if any deposited to the credit of M.C.O.P.No.3330 of 2013 before the Tribunal.

28.11.2024

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Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To
Motor Accident Claims Tribunal

Krishnagiri.

M.DHANDAPANI.,J
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