BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.104 of 2013

The New India Assurance Company Limited
Represented by its Branch Manager
82, Dr.Thirumalai Plaza Upstairs
New Dharapuram Road
Palani Taluk
Dindigul District ... Appellant/2nd Respondent

Vs.

1.Velusamy ...1st Respondent/Petitioner

2.Ramasamy ....2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree dated 16.07.2012 made in MCOP.No.339 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Court), Dindigul.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 : Mr.C.K.M.Appaji

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.339 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Court), Dindigul, dated 16.07.2012 wherein the first respondent herein had filed a claim petition as against the appellant and the second respondent herein.

2. The Tribunal has awarded a sum of Rs.1,25,800/- towards compensation @ 7.5% interest per annum from the date of filing of the petition till the date of realization. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/Insurance company.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition averments are:

On 15.08.2010, the petitioner along with others being loadmen travelled in a Van bearing Registration No.TN 57 Z 7272. On the way to work, they went to death condolence at Palanigoundenputhur. While they were proceeding near Kuttiya Goundenputhur Bus Stop, the driver of the Van drove the vehicle in a rash and negligent manner and dashed against the tree. Thereby, one Ramasamy sustained head injuries and died on the spot and other persons including the petitioner who travelled as loadmen were also sustained injuries. Hence, the petitioner filed the claim petition claiming a sum of Rs.7,00,000/- towards compensation.

5.The second respondent/Insurance Company had filed a counter stating that the petition is not maintainable. The deceased and other persons had travelled in the non-transport vehicle as gratuitous passengers. The driver of the first respondent has no valid driving licence. Therefore, the respondent/insurance company is no way liable to pay compensation to the petitioner.

6.In order to prove the case of the petitioner, the petitioner was examined as P.W.1 and marked exhibits Exs.P.1 to Ex.P.10 documents and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R.1 to Ex.R.5 were marked.

7.After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.1,25,800/- towards compensation with interest at the rate of 7.5 % per annum. The Tribunal further directed the second respondent/insurance company to pay the award amount on the petitioner and thereafter, recover the same from the first respondent along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation of the amount.

8.As against the award passed by the Tribunal, the second respondent/Insurance company has preferred this present Civil Miscellaneous Appeal.

9.The learned counsel appearing for appellant/second respondent would contend that the Tribunal had failed to note that the driver of the vehicle was not having any licence to drive the vehicle. Further, the petitioner along with others were travelled in the goods vehicle as gratuitous passengers. Further, the driver of the first respondent has no valid licence and thereby, the first respondent had violated the policy condition of the insurance company. Hence, the appellant/insurance company is no way liable to pay the claim amount. If any amount is awarded by the Tribunal, the same has to be paid by the first respondent since there is a violation of policy condition.

10.The learned counsel for the appellant/insurance company had further contended that the Tribunal without considering the above aspects, wrongly awarded pay and recovery, since there is a violation of policy condition. Therefore, the present appeal is filed to set aside the award passed in MCOP.No.339 of 2011.

11.The learned counsel appearing for the first respondent/petitioner had contended that the petitioner along with others were travelled in the goods vehicle as loadmen and on the way to their work, they went to condolence, at that time, the driver of the vehicle had driven the Van in a rash and negligent manner and dashed against the tree and caused accident. Thereby, one Ramasamy died on the spot and the other co-passengers sustained injuries. Since the first respondent's vehicle was insured with the appellant/insurance company, the insurance company is liable to pay compensation and thereafter, the insurance company can recover the same from the owner of the vehicle ie. second respondent herein. The Tribunal after taking into consideration of all the aspects, had correctly awarded pay and recover and therefore, the present appeal is liable to be dismissed.

12.The learned counsel for the first respondent/petitioner has also brought to the knowledge of this Court that in M.C.O.P.No.99 of 2013, which arises out of the same accident, the same insurance company has paid the award amount by admitting their liability, but in this appeal, they refused to pay the amount.

13.This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i)whether the appeal is liable to be allowed or not?

14.In this case, there is no dispute with regard to the negligence on the part of the driver of the first respondent and no contra evidence adduced by the insurance company and the insurance company has filed this appeal on the grounds of liability fastened upon the insurance company, since the driver of the first respondent had no valid driving licence, and also the petitioner and others were travelled in the goods vehicle as gratuitous passengers. Therefore, the insurance company is not liable to pay any amount to the claimant.

15.In this context, the learned counsel for the respondent had relied upon a Full Bench Judgment of this High Court reported in ***2009(1) TN MAC 1 (FB) (Branch Manager, United India Insurance Co.Ltd., Vs. Nagammal and others)*** wherein paragraph No.31(vii) has held as follows:

> *"31(vii).Where, however, the matter has already been decided by the trial Court before the decision in Baljit Kaur's case, it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of " pay and recover" should be applied or as to whether the claimant would be left to recover the amount from the person liable ie., the driver or the owner, as the case may be."*

16.On a careful perusal of the judgement, it is clear that it would be in the discretion of the Appellate Court, depending upon the facts and circumstances of the case, whether the doctrine of pay and recover should be applied or as to whether the claimant could be left to recover the amount from the person liable i.e., the driver or the owner, as the case may be. In the case on hand also, the petitioner along with others have travelled as loadmen and they went to condolence, at that time, the accident was occurred. Though there is a violation of condition of policy, as far as the claimant is concerned, he is third party to the insurance company. Since the first respondent's vehicle insured with the appellant/insurance company, the appellant can pay the amount to the claimant and recover the same from the second respondent herein, the owner of the vehicle. The Tribunal also after referring the judgment of the Hon'ble Full Bench of this Court, correctly directed the appellant/insurance company to pay the award amount to the claimant and thereafter, recover the same from the second respondent herein/ the owner of the vehicle.

17.In view of the above said discussion, there is no infirmity or perverse in the order passed by the Tribunal. Therefore, this Court finds no warrant to interfere with the order passed by the Tribunal and it deserves to be dismissed. Accordingly this Civil Miscellaneous Appeal is dismissed and the impugned award dated 16.07.2012 passed in M.C.O.P.No.339 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Court), Dindigul is confirmed. No costs.

04.01.2024

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

1. The Motor Accident Claims Tribunal
/Additional District & Sessions Judge, Dindigul

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL,J.

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