BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.01.2024

CORAM:

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

C.M.A(MD)No.287 of 2013

The New India Assurance Company Limited,
Kamarajar Salai,
Madurai,
Through its Branch Manager. ... Appellant/2nd Respondent

Vs.

1.A.Mayandi ... 1st Respondent/Petitioner

2.P.F.Selvaraj ... 2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree, dated 14.08.2012 made in M.C.O.P.No.1511 of 2008 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Judge, Madurai.

For Appellant : Mr.K.Murugesan

For Respondents : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.1511 of 2008 on the file of Motor Accident Claims Tribunal, III Additional Sub Judge, Madurai, wherein the first respondent herein filed claim petition before the Tribunal, as against the second respondent herein as well as the appellant.

2. The Tribunal had awarded a sum of Rs.92,500/- by directing the appellant Insurance Company to pay an amount to the petitioner and thereafter, recover the same from the second respondent herein. Aggrieved by the above said order, the present Civil Miscellaneous Appeal has been filed by the second respondent / 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 before the Tribunal are that the petitioner was working as Loadman in the Lorry bearing Registration No.TN W 7429. While so on 26.01.2002 at about 04.00 pm near Pattalamman Kovil in Ammachipuram to Kunnoor Road, the lorry was taken household articles. At the time, the petitioner was travelled in the lorry along with household articles. At the time, the petitioner bent his body to see the backside of the lorry to know whether any things are missing. At the time, he fell down from the lorry and sustained injuries on his head. Thereby he filed the petition for compensation of Rs.3,00,000/-.

5. **<u>The counter averments filed by the second respondent in brief are as follows:</u>**

The averments made in the petition are false, frivolous and not maintainable. In the lorry, more than 20 persons were travelled as passengers in the goods vehicle by violating the conditions of policy. Hence, the respondents are not liable to pay any compensation to the petitioner or to indeminfy the loss of the first respondent. The petitioner denied the age, income, occupation and also nature of injuries sustained by the petitioner.

6. In order to prove the case of the petitioner, the petitioner had examined P.W1 to P.W4 and marked as Exhibits P.1 to P.8 and on the side of the respondents R.W.1 was examined and marked as Exhibits R.1 and R.2.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.92,500/- towards compensation to the petitioner along with interest at the rate of 7.5% per annum by directing the second respondent / Insurance Company to pay the said amount and recover the same from the owner of the vehicle (i.e.,) the first respondent.

8. Aggrieved over by the order of the Tribunal, the second respondent / Insurance Company has preferred the present Civil Miscellaneous Appeal on the ground that the appellant / second respondent / Insurance Company is not liable to pay any amount to the petitioner, since the first respondent / owner of the lorry violated the conditions of policy.

9. The learned Counsel appearing for the appellant would contend that the vehicle involved in the accident was insured with the appellant company but however on the date of occurrence more than 20 persons were travelled in the lorry as passengers and thereby, violated the conditions of policy. Hence, appellant / Insurance Company noway liable to pay compensation to the petitioner. The Tribunal without considering the same awarded compensation to the petitioner and directed the appellant / second respondent to pay and recover the same from the second respondent / first respondent. Therefore, the order passed by the Tribunal is liable to be set aside.

10. There is no representation on behalf of the respondents in this appeal.

11. This Court after hearing on the side of the appellant 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?

12. In this case, there is no dispute with regard to the accident and the Tribunal has fastened the negligence on the part of the driver of the first respondent, after taking into consideration of evidence adduced on either side. The appellant also not disputed the negligence on the part of the driver of the lorry and only preferred the appeal on the ground of liability. According to the appellant, on the date of accident, more than 20 persons were travelled in the lorry as gratuitous passengers and the owner of the lorry violated the conditions of Insurance Policy and thereby, the appellant Insurance Company is not liable to pay any award amount to the petitioner. In this context, the driver of the first respondent, admitted that on the date of accident, more than 20 persons were travelled in the lorry for going to temple. At the time, 7 persons travelled in the door of the lorry and the chain of the door was broken. Thereby, the accident happened. Therefore, he himself admitted that the petitioner along with others have travelled in the lorry. Therefore, there is a violation of conditions of policy. The Tribunal also after taking into consideration came to a conclusion that there is a violation of conditions of policy. Thereby, considering the nature of the case and the facts and

circumstances of the case, the Tribunal directed the Insurance Company (i.e.,) the appellant / second respondent to pay compensation to the petitioner and recover the same from the owner of the vehicle. As far as the petitioner is concerned, since he is a third party to the Insurance Company and the first respondent vehicle was insured with the second respondent, the Insurance Company / appellant / second respondent can pay the award amount to the petitioner and recover the same from the first respondent. The Tribunal also correctly ordered for pay and recovery after taking into consideration of all the aspects. As far as the quantum of amount is concerned, the Insurance Company has not disputed the quantum. The Tribunal also after taking into consideration of facts and circumstances of the case, awarded a sum of Rs.92,500/- along with interest at the rate of 7.5% per annum. Therefore, the order passed by the Tribunal is fair compensation.

13. In view of the above said discussions, the order passed by the Tribunal is in order and this Court has no warrant to interfere with the order of the Tribunal. This Court is of the opinion that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

Accordingly, this Civil Miscellaneous Appeal stands dismissed and the impugned award, dated 14.08.2012 on the file of the Motor Accidents Claim Tribunal, III Additional Sub Judge, Madurai is confirmed. There shall be no order as to costs.

12.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR
To
1.The Motor Accidents Claims Tribunal,
III Additional Sub Judge, Madurai.

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

P. DHANABAL, J.

BTR

C.M.A(MD)No.287 of 2013

12.01.2024