BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.680 of 2018**
**and**
**C.M.P(MD)Nos.7844 of 2018 & 1058 of 2022**

The Branch Manager,
New India Assurance Company Limited,
Dindigul. ... Appellant/2nd Respondent

Vs.

1.Arulanandam ... 1st Respondent/Petitioner

2.Arulmurugan ... 2nd Respondent/1st Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree, dated 17.07.2017 passed in M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Dindigul.

For Appellant : Mr.G.Prabhu Rajadurai

For R-1 : Mr.C.K.M.Appaji

For R-2 : No appearance

**JUDGMENT**

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal / Special Sub Judge, Madurai, primarily on the ground of liability.

**2.** As per the injured claimant, he was travelling as a load-man in the Mahindra Maxima van which is owned by the first respondent and insured with the second respondent. The claimant has further contended that while he was travelling as a load-man on 10.05.2012, the driver of the Mahindra van had driven the vehicle in a rash and negligent manner and it had got capsized. Due to the said impact, he had sustained grievous injuries. Hence, he had prayed for a compensation of Rs.5,00,000/-.

**3.** The Insurance Company has filed a counter contending that as per the FIR, 11 persons had travelled in the goods vehicle as un-authorised passengers. Therefore, the claimant has not travelled in the vehicle as a load-man. Hence, they have contended that an un-authorised passenger is not covered by the policy.

**4.** The Tribunal after considering the oral and documentary evidence has arrived at a finding that, the Insurance Company has not proved their defence that the injured claimant was travelling as an un-authorised passenger in the vehicle. On the basis of the above said finding, the Tribunal has proceeded to mulct the liability upon the Insurance Company and directed the Insurance Company to pay a compensation of Rs.2,25,000/- along with 7.5% interest. Challenging the same, the present appeal has been filed by the Insurance Company.

**5.** The learned Counsel appearing for the Insurance Company relied upon Exhibit P.1 FIR and the evidence of the claimant, namely, P.W.1 and contended that, around 11 persons had travelled in the goods vehicle as un-authorised passengers and therefore, the Tribunal was not right in shifting the burden of proof upon the Insurance Company to establish their defence. In fact, the claimant should establish that, he was travelling in the goods vehicle as a load-man. Hence, he prayed for allowing the appeal and to exonerate the Insurance Company from the liability.

**6.** Per contra, the learned Counsel appearing for the respondent / claimant had relied upon the evidence of P.W.1, who is the owner of the lorry, contended that he travelled only as a load-man in the vehicle and therefore, he is covered by the policy. Hence, the order of the Tribunal may be sustained.

**7.** I have carefully considered the submissions made on either side and perused the materials available on record.

**8.** The accident has taken place at about 03.15 p.m., on 10.05.2012. One of the co-passengers of the said Mahindra van, namely, Ramachandran has lodged a police complaint on 11.05.2012 at about 01.00 p.m. As per the FIR, around 11 persons have travelled in the said goods vehicle in order to reach their Town after completing their work. The claimant has been examined as P.W.1. During cross-examination, he has admitted that, around 11 persons have travelled in the vehicle and there was no goods or any load at the time of the accident. He has further deposed that, the version made in the FIR that around 11 persons have travelled in the goods vehicle after completing their work is correct. Therefore, it is clear that the Insurance Company has established the fact that, the injured claimant was only travelling as an un-authorised passenger in a goods vehicle and not in the capacity of a load-man. The Tribunal was not right in shifting the burden upon the Insurance Company to prove that the injured claimant has not travelled as a load-man.

**9.** In view of the above said facts, the Tribunal was not right in mulcting the liability upon the Insurance Company and the appellant Insurance Company is liable to be exonerated. However, the first respondent in the claim petition, namely, the owner of Mahindra Maxima van is mulcted with the liability to pay the said compensation.

**10.** The appeal stands partly allowed to the extent of exonerating the appellant Insurance Company. In other respects, the award of the Tribunal stands confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

**04.07.2024**

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Motor Accident Claims Tribunal
(Special Sub Judge),
Dindigul.

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

**R.VIJAYAKUMAR, J.**

BTR

**Judgment made in**
**C.M.A(MD)No.680 of 2018**

**04.07.2024**