



C.M.A(MD)No.1124 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.07.2024
DELIVERED ON : 16.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1124 of 2018
and
C.M.P(MD)No.11439 of 2018

M/s.The Oriental Insurance Company Limited,
Through its Divisional Manager, Hub,
KJR Complex,
No.16, North Veli Street,
Madurai District.

... 1st Appellant/2nd Respondent

Vs.

1.S.Asaithambi

... 1st Respondent/1st Petitioner

2.C.Kannan

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 1350 of 2014, dated 17.04.2018 on the file of the Motor Accident Claims Tribunal cum Special Sub Judge, Madurai.

For Appellant : Mr.E.Chandrasekaran
For R-1 : Mr.S.M.Mohan Gandhi
For R-2 : Mr.S.Loganathan



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JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.1350 of 2014 on the file of the Motor Accident Claims Tribunal cum Special Sub Judge, Madurai, primarily on the ground of liability.

2. According to the claimant, he is a coolie and he was travelling as a passenger in the jeep owned by the first respondent and insured with the second respondent on 21.02.2014. A concrete mixer machine was attached to the jeep and he was proceeding for construction work as a coolie. When the jeep stopped at the work spot, he had got down from the jeep. The driver of the jeep had suddenly moved it and therefore, the concrete mixer machine attached to the jeep had hit against the left leg of the claimant. Therefore, he sustained grievous injuries. Hence, he prayed for a compensation of Rs.3,00,000/-.



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3. The Insurance Company had filed a counter contending that there is no permit to the jeep for attaching a concrete mixing machine. Therefore, it is violation of policy condition. That apart, the injured claimant had travelled as a passenger in the jeep. The policy is a liability only policy. Any injury to the occupant of the jeep is not covered under the policy. Hence, they have prayed for exoneration of the Insurance Company.

4. The Tribunal though had arrived at a finding that, the policy is a liability only policy and it had concluded that, the injured claimant had already got down from the jeep and therefore, he should only be treated as a third party. The incident has happened due to the rash and negligent driving on the part of the driver of the jeep and therefore, the Insurance Company is liable to pay compensation. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned Counsel appearing for the Insurance Company, even as per the claim petition, the injured claimant had travelled only as a passenger in the jeep. One of the friends of the claimant had



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already got down from the vehicle and when he was attempting to get down from the vehicle, the concrete mixer machine attached to the jeep had dashed against the jeep and the claimant had sustained grievous injuries. Only in the capacity as a passenger of the jeep, the claimant was standing behind the jeep at the relevant point of time. Therefore, the Insurance Company is not liable to pay any compensation for the injuries sustained by a passenger of a jeep, which is covered under a liability only policy. Hence, he prayed for setting aside the award passed by the Tribunal.

6. Per contra, the learned Counsel appearing for the claimant had contended that, he had already got down from the vehicle and therefore, he cannot be considered to be a passenger of the jeep. He should be considered only as a third party to the contract of insurance. In such circumstances, the award of the Tribunal may be sustained.

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



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8. The accident had taken place at 07.45 a.m., on 21.02.2014. An FIR has been registered at 07.30 a.m., on 26.02.2014 by the claimant. In the FIR, it is specifically stated that, after the claimant had got down from the jeep, the driver had negligently moved the jeep and therefore, the concrete mixing machine attached to the jeep had dashed against him. In the claim petition also, it is specifically stated that, after he had reached the work spot, the jeep had stopped and he had also got down from the jeep. Had he remained in the jeep itself as a passenger, the concrete mixer machine would not have dashed against the claimant. Therefore, it is clear that, the claimant had already got down from the vehicle and when he was standing behind the jeep, the driver had moved the vehicle in a rash and negligent manner and thereby, the concrete mixer machine attached to the jeep had suddenly moved and dashed against the claimant causing injuries.

9. Only until the claimant is inside the jeep, he could be considered as a passenger of the jeep. Once he had alighted from the jeep, he can be treated only as a third party and not a passenger of the jeep. In such circumstances, even though the policy of the jeep is a liability only policy, it



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covers third parties to the contract of insurance. Therefore, the accident has taken place only due to the rash and negligent driving on the part of the driver of the jeep.

10. No documents have been placed on record to establish whether the concrete mixer machine has been registered or insured independently. There are no records to establish that, the owner of the jeep had obtained permit for attaching the concrete mixer machine to the jeep. The accident has happened only due to the attachment of concrete mixer machine to the jeep. Hence, it is a clear case of violation of policy condition. Since the claimant had sustained injuries only as a third party, the award of the Tribunal has to be satisfied by the Insurance Company and thereafter, it can be recovered from the owner of the jeep for violation of policy conditions. The Tribunal has fixed the compensation at Rs.1,96,000/-. After going through the award under various heads, this Court does not find any reason to interfere with the quantum of award.



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To

- 1.The Motor Accident Claims Tribunal
cum Special Sub Judge,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.1124 of 2018

16.07.2024