

C.M.A(MD).No.230 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.03.2023

PRONOUNCED ON : 19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.230 of 2015

and

MP(MD).No.1 of 2015

The Oriental Insurance Co.,Ltd.,
DDJ Center, First Floor
Vadasery Bus Stand (Opp)
Nagercoil

... Appellant

vs.

1.Krishnan

2.Sterlin Packiadoss

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 13.07.2012 made in M.C.O.P.No.259 of 2008 on the file of the Motor Accident Clams Tribunal, Sub Court, Valliyoor.

For Appellant : Mr.S.Veeranasamy

For R1 & R2 : No appearance



WEB COPY

JUDGMENT

The Insurance Company is challenging the award of the Motor Accident Claims Tribunal, Valliyoor in MCOP.No.259 of 2008 primarily on the ground of liability.

2. According to the injured claimant he was travelling as a pillion rider in a motor bike which was driven by the owner cum driver namely Rajesh. On 30.10.2008 at about 6.30 p.m, a mini bus belonging to the first respondent and insured with the second respondent had dashed against the rear side of the motor bike in which the claimant had sustained grievous injury. Hence, he had prayed for a sum of Rs.5,00,000/- towards compensation.

3. The first respondent namely the owner of the mini bus had filed a counter contending that only the rider of the motor bike drove the said vehicle in a rash and negligent manner and hit against the rear side of the mini bus. Therefore, the driver of the motor bike should have been impleaded as a party. The vehicle being insured with the second respondent, the second respondent alone is liable to pay compensation.

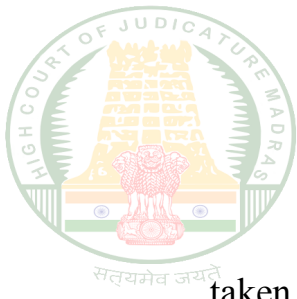


C.M.A(MD).No.230 of 2015

WEB COPY

4.The second respondent insurance company had filed a counter contending that the driver of the mini bus was not driving the vehicle in a rash and negligent manner and the accident has happened only due to the rash and negligent driving of the motor bike when he attempted to over take the mini bus on the right side. The insurance company had further contended that the mini bus has got permit to operate only between Vadasery and Sun Polytechnic. However, at the time of accident, the vehicle was operating near Olikinacheri. Therefore, for violation of permit condition, the insurance company is not liable to pay any compensation.

5.The Tribunal after considering the oral and documentary evidence arrived at a finding that the accident has taken place only due to the rash and negligent driving of the mini bus owned by the first respondent. The Tribunal further found that the violation of permit condition is not a defence available to the insurance company under Section 149(2) of Motor Vehicles Act and therefore, the insurance company cannot be absolved from its liability as far as the third parties are concerned. The Tribunal further found that categorical stand has been



C.M.A(MD).No.230 of 2015

WEB COPY

taken by the driver of the mini bus who was examined as RW2 that there were no passengers in the mini bus at the time of accident and the bus was taken only for inspection.

6.In view of the above said findings, the Tribunal arrived at a conclusion that the route permit violation is not a defence and the insurance company is liable to pay compensation. The first respondent namely the owner of the mini bus was exonerated and the liability was fixed upon the insurance company.

7. Partial permanent disability of the injured claimant was fixed at 35% based upon Exhibit P8 -certificate and a sum of Rs.35,000/- was awarded towards permanent disability and including the compensation under the conventional heads, a total compensation of Rs.1,28,950/- was awarded by the Tribunal. This award of the Tribunal is under challenge in the present appeal.

8.The learned counsel for the appellant/insurance company had contended that as per Exhibit R1-permit, the vehicle can operate only between Vadasery and Sun Polytechnic. At the time of the accident, the vehicle was plying near Olikinacheri and therefore, there is a clear permit



C.M.A(MD).No.230 of 2015

WEB COPY

violation and the Tribunal has erroneously exonerated the owner of the mini bus. He had further contended that the accident has taken place only due to the rash and negligent driving of the driver of the motor bike and erroneously liability has been fixed upon the driver of the mini bus. He had further questioned the quantum of compensation awarded to the injured claimant contending that it is highly excessive.

9. Though notices were served to the claimant and the owner of the vehicle, they have not chosen to appear either in person or through their counsel.

10. I have given anxious consideration to the submissions made on the side of the appellant and perused the material available on records.

11. The injured claimant had specifically contended that when he was travelling as a pillion rider in a motor bike, a mini bus belonging to the first respondent had dashed against the rear side of the motor bike and he was thrown away and he sustained injury. However, it is the case of the owner of the mini bus and the insurance company that the motor bike had dashed against the rear side of the mini bus and it has resulted in the accident.



C.M.A(MD).No.230 of 2015

WEB COPY

12.A perusal of Exhibit P5-motor vehicle inspector's report will clearly indicate that the rear wheel of the two wheeler had got twisted. The foot rest on the right has been damaged and the saree guard is bent. Therefore, it is clear that the bike has been damaged on its rear side and not in front side. Hence, it is clear that the claimant had established his contention that the mini bus had dashed against the rear side of the motor bike and not otherwise. Therefore, the Tribunal was right in holding that the accident has taken place only due to the rash and negligent driving of the mini bus owned by the first respondent.

13.The insurance company in their counter have taken a specific stand that the mini bus is having permit to ply only between Vadasery Bus Stand and Sun Polytechnic. Since the accident has taken place in Olikinacheri which is not in the permit route, the insurance company had contended that there is a violation of permit condition. The insurance company had issued a legal notice to the owner of the mini bus on 27.03.2010 calling upon the owner of the mini bus to produce the route permit and in the said legal notice the violation of permit condition has been pointed out. In the said legal notice, it was also pointed out that

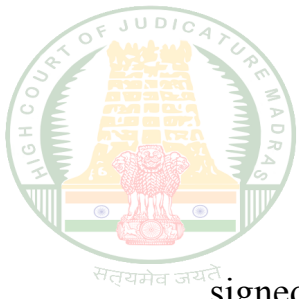


C.M.A(MD).No.230 of 2015

there were some passengers in the said mini bus at the time of accident.

WEB COPY

14.The first respondent owner of the mini bus had filed a counter before the Tribunal on 07.07.2010. In the counter, the owner of the mini bus has not chosen to aver anything relating to the violation of permit condition or with regard to the presence of passengers in the mini bus at the time of accident. The driver of the mini bus has been examined as RW2. In his evidence, he had contended that the vehicle was taken to the depot and there was a board in front of the mini bus indicating that it is for inspection. He had further deposed that there were no passengers at the relevant point of time. The owner of the mini bus has been examined as RW3. In his chief examination, he has contended that there were no passengers at the time of accident. During cross examination, he had taken a different stand that on the date of the accident there was a traffic diversion due to the visit of politician and therefore, all the vehicles plied only through Olikinacheri.. However, he had contended that he is not having any document to prove the same. The owner of the mini bus had marked Exhibit R8- trip sheet in an attempt to prove that there were no passengers at the time of accident. However, the trip sheet has been



WEB COPY

C.M.A(MD).No.230 of 2015

signed only by the conductor and there was no counter sign by any one of the authorities of the Transport Department. During cross examination, it has been suggested by the insurance company that this trip sheet has been prepared as an after thought only to avoid the liability to pay compensation and the said suggestion has been denied by the owner of the mini bus.

15.The above said facts will clearly indicate that the mini bus owner has not chosen to dispute the violation of permit condition or the presence of the passengers at the time of accident in his counter despite the same was brought to his knowledge in March 2010.

16.The driver of the mini bus had contended that the bus was taken through Olikinacheri for the purpose of inspection. However, the owner of the bus in his cross examination, has taken a different stand that all buses were diverted through Olikinacheri due to the visit of politician. Therefore, it is clear that there were passengers at the time of accident when the bus was plying through Olikinacheri, in violation of the permit conditions.



C.M.A(MD).No.230 of 2015

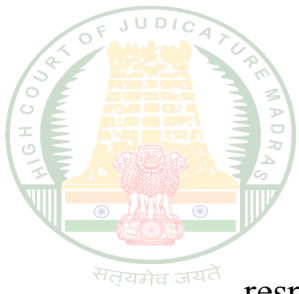
WEB COPY

17.The Tribunal had arrived at a finding that the violation of permit condition is not a defence for the insurance company to avoid payment of compensation. However, in view of Section 149(2)(c) of Motor Vehicles Act, it is clear that violation of permit condition is one of the grounds available to the insurance company to avoid payment of compensation. However, any violation of policy condition or permit condition would not completely exonerate the insurance company, but the insurance company has to satisfy the award and thereafter, recover the same from the insured by filing execution proceedings in the same claim petition.

18.A perusal of the quantum of award in the claim petition indicates that the same is based upon Exhibit P8-disability certificate and medical bill under Exhibit P7. Therefore, this Court does not find any ground to interfere in the quantum of compensation awarded by the tribunal.

19.In view of the above said facts, the award of the Tribunal is modified to the following effect:

(i).The dismissal of the claim petition as against the first



C.M.A(MD).No.230 of 2015

WEB COPY

respondent in the claim petition is hereby set aside.

(ii).the second respondent in the claim petition is liable to satisfy the award and thereafter, he is entitled to recover the same from the first respondent in the claim petition.

20.This Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

1.The Motor Accident Clams Tribunal,
Sub Court, Valliyoor.

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



WEB COPY

VERDICTUM.IN



C.M.A(MD).No.230 of 2015

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
C.M.A(MD)No.230 of 2015
and
MP(MD).No.1 of 2015

19.04.2023

11/11