

(2006) 10 MAD CK 0176

In the Madras High Court

Case No : C.M.A. (NPD-S) No. 914 of 1998

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mottaiammal and Others

RESPONDENT

Date of Decision : 25-10-2006

Acts Referred:

Citation : (2007) 2 ACC 584 : (2007) ACJ 1254

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : N. Vijayaraghavun, for the Appellant; K. Kalyanasundaram, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This civil miscellaneous appeal preferred by the insurance company, respondent No. 3, before the Tribunal, arises out of the judgment dated 21.7.1997 passed by the Motor Accidents Claims Tribunal (Sub-Court), Udumalaipettai in M.C.O.P. No. 207 of 1990.

2. According to the claimant before the Claims Tribunal on 14.4.1990, she along with her son and others, was proceeding to Kaaliammal Temple in the vehicle bearing registration No. TN 41-1117 and while so, near Devipattinam, the driver, respondent No. 1, drove the vehicle belonging to respondent No. 2 in a rash and negligent manner, thereby causing accident on account of which, she and others travelling in the vehicle got injured. It was her case that she was a coolie earning Rs. 350 per month and she was liable to be paid a compensation of Rs. 50,000 under various heads. On her side, she herself was examined as PW 1 and five exhibits were marked as documentary evidence.

3. Driver, respondent No. 1, remained ex parte before the Tribunal and the owner of the vehicle, respondent No. 2, contested the claim saying that the accident was not caused because of his driver and it occurred only because of the carelessness of the injured-claimant. He further contested the claim of the

injured-claimant with regard to her income and medical treatment taken by her. The insurance company, respondent No. 3, by filing its counter, contended that the vehicle involved in the accident was only a goods vehicle and not a passenger vehicle and as such it was not liable to compensate the injured-claimant. It also disputed on the aspects of age and income of the injured-claimant and with regard to nature of injuries sustained by her. On the side of respondents, two witnesses were examined and five exhibits were marked.

4. On consideration of the oral and documentary evidence, the Tribunal fixed negligence on the part of the driver of the vehicle in question and made the insurance company liable to pay a compensation of Rs. 18,000 with interest at the rate of 12 per cent per annum from the date of claim petition till the date of deposit. Aggrieved by this award of the Tribunal, the insurance company, respondent No. 3 has come by way of an appeal before this court.

5. The only contention raised by counsel for the appellant insurance company is that the Claims Tribunal has erred in fastening liability on the insurance company when admittedly, the injured-claimant was travelling in a goods vehicle and she was not covered as per copy of the insurance policy, Exh. RI.

6. Per contra, Mr. Kalyanasundaram, learned Counsel for the respondent No. 1-claimant has contended that in the absence of any evidence to prove that the injured-claimant was not covered by the policy of insurance, fastening of liability by the Tribunal on the part of the insurance company has to be upheld.

7. Heard both sides.

8. Since no ground has been made out in the appeal and the counsel for the appellant also has not advanced any argument on the aspects of negligence and quantum of compensation, I am not traversing on those aspects and thus, the point for consideration in this appeal is narrowed down to find out as to whether the Tribunal is right in fastening the liability on the part of the appellant insurance company.

9. Admittedly, the vehicle in question is a goods vehicle. Also, respondent No. 1-claimant has deposed that she travelled in the vehicle as a coolie along with several others. In support of his contention that there was no coverage for the passengers and hence, the insurance company need not be made liable to pay the compensation, the counsel for the insurance company has relied on a judgment of the Supreme Court reported in the case of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , wherein the Supreme Court held that it is only the owner of the vehicle who has to make good the compensation.

10. I have perused the insurance policy of the vehicle in question which is marked as Exh. RI wherefrom it can be found that the coolies/driver/cleaner are also covered under the policy of insurance for which a sum of Rs. 16 has been paid as premium. In that view of the matter, the contention of the counsel for the appellant insurance company that respondent No. 1-claimant is not covered

under the policy of insurance, does not have legs to stand and as such, his reliance on the decision of the Supreme Court does not have any relevance on the case on hand. In view of these findings, I hold that the judgment of the Tribunal is not infirmed and I have no hesitation in confirming the same.

11. In the result, appeal which is devoid of any merit, deserves to be dismissed and is accordingly dismissed without any order as to costs.