(2016) 11 MAD CK 0061

In the Madras High Court

Case No : C.M.A. (Md) No. 588 of 2016 and C.M.P. (Md) No. 6749 of 2016

Oriental Insurance Company Limited — APPELLANT

Vs

Panchavarnam — RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, Section 173

Citation : (2017) 1 AnWR 14

Hon'ble Judges : Mr. S.M. Subramaniam, J.

Bench : Single Bench

Advocate : Mr. J.C. Rathinavel Pandian, Advocate, for the Respondent No. 1; Mr. C. Jawahar Ravindran, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Mr. S.M. Subramaniam, J. - The appellant/Oriental Insurance Company has filed the present C.M.A(MD)No.588 of 2016, challenging the award passed in MCOP.No. 24 of 2012, dated 19.06.2015, on the file of the Motor Accident Claims Tribunal-cum-Sub Court, Sankarankovil.

2. It is a case of an injury caused in an accident took place on 05.04.2012 around 9.00 a.m. near Paraipatti Hindu Middle School. The injured victim has filed an application seeking compensation before the Tribunal. Considering the facts and circumstances of the case, the Tribunal awarded Rs.69,000/- as compensation and further ordered for pay and recovery.

3. The Tribunal has directed the Insurance Company to pay the compensation and recover the same from the owner of the vehicle, since the claimants are gratuitous passengers.

4. The findings of the Tribunal is very clear that it is a goods vehicle, which met with an accident and in the goods vehicle, 17 persons were unauthorisedly travelled. In the goods vehicle passengers are not permitted and therefore all the 17 persons travelling in the goods vehicle ought to be treated as gratuitous

passengers.

5. The learned counsel for the appellant contended that the gratuitous passengers are not entitled for any compensation from the appellant/ Insurance Company in view of the fact that they are not covered under the Insurance Policy. Such being the legal position, the Tribunal has rightly found that they are gratuitous passengers, but wrongly fixed the liability on the appellant/Insurance Company and ordered pay and recovery. It is not a case of pay and recovery in view of the fact that it is a statutory violation and under Section 147 of the M.V. Act, the Insurance Company is totally exonerated from the liability in respect of gratuitous passengers and they are not covered under the insurance policy.

6. The learned counsel for the respondent opposed the appeal by stating that the Tribunal has ordered pay and recovery alone in view of the violation of the policy condition and there is no error on record by the Tribunal, this Court is unable to appreciate the arguments advanced by the learned counsel for the respondent and in fact the 17 persons travelling unauthorisedly in the goods vehicle are gratuitous passengers and the findings of the Tribunal is also unambiguous in this regard. Such being the case, the gratuitous passengers are not entitled for compensation from the Insurance Company and they can recover the entire compensation only from the owner of the vehicle, who is responsible to pay compensation in respect of gratuitous passengers. Accordingly, this Court is inclined to consider the ground for appeal and award passed by the Tribunal in MCOP.No.24 of 2012 dated 19.06.2015, is set aside and the Civil Miscellaneous Appeal is allowed.

7. The appellant/Oriental Insurance Company is permitted to withdraw the deposited amount with proportionate interest by filing necessary application before the Tribunal.

8. The respondent/claimant is permitted to recover the entire award of compensation from the owner of the vehicle in the manner known to law. No costs. Consequently connected miscellaneous petition is closed.

