IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CMA No.1798 of 2009

Pangajam .. Appellant/Claimant

Vs

1. K.Sivagnanam
2. United India Insurance Company Limited
   3, Giriram Building Main Road
   Gobichettipalayam,
   Erode District .. Respondents/Respondents

Appeal against the judgment and decree dated 22.4.2009 passed by the learned Motor Accident Claims Tribunal, Principal District Court, Erode and District in MCOP.No.521 of 2008.

For Appellant : Mr.I.C.Vasudevan

For R1 : Mr.R.Nalliyappan

For R2 : Mr. C.Paranthaman

J U D G M E N T

The Appellant/ claimant, who sustained grievous injuries in the accident that took place on 17.5.2006 has filed a claim petition before the Court below claiming a compensation in a sum of Rs.1,71,710.50 The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.1,16,711/- with interest at the rate of 7.5% per annum from 18.7.2008 till the date of deposit. The claim petition made by the claimant against the second respondent / Insurance company was rejected. Questioning the same, the present appeal has been filed by the claimant.

2. The learned counsel appearing for the appellant/ claimant would contend that though it is the case of the Insurance company that the policy is a third party insurance policy and they are not liable to pay, it accepted the claim of the daughter alone under third party coverage, who was

travelling in the car along with the appellant. The learned counsel would further contend that ex parte decree has been passed by the Court below. The learned counsel would also contend that insofar as the other two persons, the Insurance company agreed to pay the insurance. But as far as the appellant/wife is concerned, the claim has been rejected by the Court below stating that she cannot be termed as a third party. According to the learned counsel, if the policy is only third party insurance policy, the insurance company ought not to have agreed the claim made by the daughter. Since the Insurance company agreed to pay the money to the daughter along with third party, they are liable to pay the same to the appellant herein also. Therefore, the learned counsel for the appellant prayed for allowing the appeal.

3. The learned counsel for the Insurance company would contend that the policy is a third party insurance policy and the same has not been marked before the Court below and only ex parte has been passed by the Court below and that now the policy itself has been produced before this Court and the same has been marked by this Court as Ex.R1 by order dated 28.8.2015. The learned counsel would also contend that merely because the claim of the daughter has been accepted, the same cannot be a ground to claim amount by the appellant. Therefore, the learned counsel would contend that there is no liability on the part of the insurance company.

4. Heard the learned counsel for the appellant/claimant, learned counsel for the first respondent and the learned counsel for the second respondent/ Insurance company.

5. The liability alone has been questioned in this appeal. Insofar as quantum is concerned, there is no dispute. Therefore, the quantum fixed by the Court below is confirmed.

6. It appears that the first respondent /husband is the owner as well as the driver of the vehicle. The appellant herein is the wife. The wife, daughter and third party have travelled in the vehicle. By way of ex parte decree, the claim made by third party as well as daughter have been granted. However, the claim made by the appellant/ wife against the Insurance company was rejected by the Court below. Against which the present C.M.A has been filed.

7. It is the contention of the appellant/wife that if the policy is a third party insurance policy, then the insurance company ought not to have accepted the claim made by the daughter. According to the appellant, the ex parte decree has been passed by the Court below directing the Insurance company

to pay money to the daughter under third party coverage. As against which, the Insurance company has not filed any appeal and they have also paid money to the daughter. Therefore, according to the appellant the said ex parte decree squarely applies to her case also as she is also one of the occupant in the car along with her daughter.

8. In the present case, it is seen that the first respondent herein, who has driven the vehicle at the time of accident, is the owner of the said vehicle. The appellant herein is the wife of the first respondent. The wife and daughter have travelled in the vehicle along with the first respondent. The claim made by the third party as well as daughter have been granted in the ex parte decree. However, the claim made by the appellant/ wife against the Insurance company was rejected by the Court below. As rightly pointed out by the learned counsel for the appellant, the claim of the daughter has been accepted by the Court below by an ex parte decree. The Insurance company has not marked the policy before the Court below at that time. Now they have produced the original policy and the same has been marked as Ex.R1. Therefore, on the said ground, the claim of the appellant cannot be accepted. However, the Insurance company failed to prefer an appeal as against the said ex parte decree. Further, the appellant herein is also one of the occupants in the vehicle, which was driven by the first respondent / husband. Further, in the original counter, this point has not been raised at all by the Insurance Company. They have admitted the claim. The money has also been paid to the daughter as per the ex parte decree.

9. Therefore, considering the above facts and also considering the peculiar circumstances of the case, the following order is passed and the same will not be taken as a precedent.

1. The Insurance company is directed to deposit 60% of the award amount with interest at 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order.

2. The remaining 40% shall be paid by the first respondent with interest at 7.5%, less the amount already deposited, if any.

3. On such deposit being made, the claimant is permitted to withdraw the same, less the amount already withdrawn, if any.

With the above modification, the civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ga
To
The Motor Accident Claims Tribunal
Principal District Judge, Erode

+1 cc to Mr.I.C.Vasudevan, Advocate, sr.52994
+1 cc to Mr.C.Paranthaman, Advocate, sr.52999

CMA NO.1798 of 2009

kgk co
kra 18.01.2016