BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.322 of 2016
and
CMP(MD)Nos.4519 and 6773 of 2016
and
CROS.OBJ(MD)No.14 of 2016

CMA(MD)No.322 of 2016
M/s.United India Insurance Co.Ltd.,
Rep. through its Branch Manager,
Having office at
Sithalakshmi Complex,
Thirunagar,
Madurai-625 006. ... Appellant/2nd Respondent

vs.

1)B.Bhalamurugan ...1st Respondent/Petitioner
2)G.Nagarajan ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 16.10.2014 made in MCOP.No.24 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Madurai.

For Appellant : Mr.A.S.Mathiyalagan
For R1 : Mr.S.Karthikeyan

CROS.OBJ(MD)No.14 of 2016
B.Bhalamurugan ... Cross Appellant/1st Respondent

vs.

1)M/s.United India Insurance Co.Ltd.,
Rep. through its Branch Manager,
Having office at
Sithalakshmi Complex,
Thirunagar,
Madurai-625 006. ...1st Respondent/Appellant

2)G.Nagarajan ... 2nd Respondent/2nd Respondent

Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree dated 16.10.2014 made in MCOP.No.24 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Madurai.

For Cross Objector: Mr.S.Karthikeyan
For R1 : Mr.A.S.Mathiyalagan

COMMON JUDGMENT

CMA(MD)No.322 of 2016

It is the case of injury caused on account of the accident took place on 04.06.2010 around 06.00 p.m on Madurai-Ramnad National Highway road in front of Priya Theatre, Manamadurai. The injured filed application seeking compensation before the Motor Accident Claims Tribunal, Special Sub Court, Madurai, and the Tribunal considering the facts and the circumstances of the case, awarded compensation of Rs.1,47,800/- with 7.5% interest per annum. The appellant insurance company preferred this appeal, on the ground that the policy issued by the appellant is an ''Act only Policy'' and according to the policy, the occupant of a private vehicle is not entitled for any compensation, in view of Section 147 of the Motor Vehicles Act and the respondent/claimant, who was the occupant of a private vehicle namely, Maruthi Omni Van, is not covered under the insurance policy, more specifically, the ''Act only Policy''. The policy was marked as Ex.R3 before the Tribunal and further, the insurance company officials were also examined as witnesses, but the Tribunal failed to frame an issue in this regard and omitted to made a finding.

2.Learned counsel for the respondent/claimant contended that though it is an Act only policy, the Tribunal considered all these aspects and rightly awarded compensation. Hence, there is no infirmity in the award and accordingly, this appeal is to be dismissed.

3.Such being the situation, this Court is of the view that the fixation of liability on the part of the appellant insurance company by the Tribunal, is in violation of Section 147(1)(ii) of the Motor Vehicles Act, which states that in order to comply with the requirements of this Chapter, a policy of insurance must be a policy against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Further, the Division Bench of this Court in *National Insurance Company Ltd., vs. Pooja Manoj Singh and others*, reported in *2010 (2) TN MAC 550 (DB)*, has held as follows:-

> ''9. We have heard learned counsel for the parties. It has not been disputed that originally the Insurance Company was not impleaded as party respondent in the Claim Petition. It was at the instance of the Transport

Corporation, the Tribunal by its order impleaded the Insurance Company. The appellant Insurance Company took a very specific and categorical defense that although the Zen Car was insured, but the policy was an Act Policy, and no additional premium was paid for covering the risk of occupants of the car. In spite of the above said admitted position, the Tribunal without recording any finding with regard to the liability of the Insurance Company proceeded on the basis that since there was head on collision between the bus and the car, the liability should be apportioned at the ratio of 2:1. We are of the view that the Tribunal committed error of law in holding the Insurance Company liable to pay the compensation amount. As noticed above, the insurance policy of the car, which was a private car, was an Act Policy, and therefore, the occupants of the car were not covered under the policy. In the case of Oriental Insurance Co. Ltd. Vs. Jhuma Saha reported in 2007 ACJ 818 (SC), the fact of the case was that the deceased was the owner of the vehicle, a Maruti Van. While he was driving the said vehicle, it dashed with a tree and the owner of the vehicle succumbed to the injuries. A claim case was filed by the legal representatives of the deceased for compensation. The insurance company contested the claim and denied its liability on the ground that no additional premium was paid covering the risk of the owner of the vehicle. The Apex Court observed:

> ''13. The additional premium was not paid in respect of the entire risk of death of or bodily injury to the owner of the vehicle. If that be so, section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.''

Hence, in the facts of the case, it can safely be couched that the appellant Insurance Company has no liability to pay the compensation.''

4.Hence, the order of the Tribunal is infirm and liable to be set aside and accordingly, set aside. The appellant is permitted to withdraw the entire award amount with proportionate accrued interest, if any, lying in the credit of the claim petition, by filing necessary application before the Tribunal.

In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, CMP(MD)Nos.4519 and 6773 of 2016 are closed.

CROS.OBJ(MD)No.14 of 2016

This Cross Objection is filed by the claimant seeking enhancement of compensation and when the very liability itself was decided in favour of the insurance company and the insurance company is totally exonerated from the liability to pay compensation, the claimant is not entitled to seek any enhancement. Consequently, this Cross Objection is dismissed. The claimant is entitled to recover the compensation from the owner of the vehicle in the manner known to law. No costs.

Sd/-
Assistant Registrar[CO]

/True copy/

Sub Assistant Registrar

To

The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy To:-

The Section officer,
V.R. Section,
Madurai Bench of Madras Highcourt,
Madurai.

+1CC TO MR.A.S.MATHIALAGAN, ADVOCATE SR. 74641

NBI
TE/SS2-KSM : 25/01/2017 : 4P/4C

CMA(MD)No.322 of 2016 and
CMP(MD)Nos.4519 and 6773 of 2016 and
CROS.OBJ(MD)No.14 of 2016
30.11.2016