BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.(MD)Nos.2002 to 2006 of 2013
and 1298 of 2013
and
M.P.(MD)No.1 of 2013

C.M.A.(MD)NO.2002 of 2013

THE UNITED INDIA INSURANCE COMPANY LTD.,
THROUGH ITS DIVISIONAL MANGER,
91, KAMARAJAR SALAI, MADURAI-9. .. Appellant/2nd Respondent

Vs.

1.PANDIAMMAL .. Respondent No.1/Petitioner

2.D.VENKATESAN @ D.MAHARAJAN .. Respondent No.2/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2010 passed in M.A.C.O.P.No.243 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Madurai.

C.M.A.(MD)NO.2003 of 2013

THE UNITED INDIA INSURANCE COMPANY LIMITED,
THROUGH ITS DIVISIONAL MANAGER, 91, KAMARAJAR SALAI, MADURAI-9.
... Appellant/2nd Respondent

- Vs. -

1 M.DINESHKUMAR ...Respondent No. 1/Petitioner
2 D.VENKATESAN @ D.MAHARAJAN
... Respondent No.2/Respondent No.1

Prayer in CMA(MD). 2003/ 2013 :
Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act 1988 against the judgment and decree dated 02.03.2010 passed in MACOP.No.244/2006 on the file of the Motor Accidents Claims, Tribunal Principal Sub Court, Madurai.

C.M.A.(MD)NO.2004 of 2013

THE UNITED INDIA INSURANCE COMPANY LIMITED, THROUGH ITS DIVISIONAL MANAGER, 91, KAMARAJAR SALAI, MADURAI-9.
... Appellant/2nd Respondent

1 ANURADHA
2 D.VENKATESAN @ D.MAHARAJAN
... Respondents

Prayer in CMA(MD). 2004/ 2013 :
Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act 1988, against the judgment and decree dated 02.03.2010 passed in MACOP.No.245/2006 on the file of the Motor Accidents Claims, Tribunal Principal Sub Court, Madurai.

C.M.A.(MD)NO.2005 of 2013

THE UNITED INDIA INSURANCE COMPANY LIMITED, THROUGH ITS DIVISIONAL MANAGER, 91, KAMARAJAR SALAI, MADURAI-9.
... Appellant

1 MINOR ILAVARASAN
S/O. M.DINESHKUMAR,
THROUGH HIS MOTHER AND GUARDIAN ANURADHA
2 D.VENKATESAN @ D.MAHARAJAN
... Respondents

Prayer in CMA(MD). 2005/ 2013 :
Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act 1988, against the judgment and decree dated 02.03.2010 passed in MACOP.No.246/2006 on the file of the Motor Accidents Claims, Tribunal Principal Sub Court, Madurai.

C.M.A.(MD)NO.2006 of 2013

THE UNITED INDIA INSURANCE COMPANY LIMITED, THROUGH ITS DIVISIONAL MANAGER, 91, KAMARAJAR SALAI, MADURAI-9.
... Appellant
VS

D.VENKATESAN @ D.MAHARAJAN
... Respondent

Prayer in CMA(MD). 2006/ 2013 :
Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act 1988 against the judgment and decree dated 02.03.2010 passed in MACOP.No.247/2006 on the file of the Motor Accidents Claims, Tribunal Principal Sub Court, Madurai.

C.M.A.(MD)NO.1298 of 2013

M/S.DIVISIONAL MANAGER, THE UNITED INDIA INSURANCE CO.LTD., BRANCH OFFICE, 91, KAMARAJAR SALAI, MADURAI-625 009.
... Appellant

VS

1 NARAYANASAMY,
2 T.VENKATESAN @ T.MAHARAJAN,
... Respondents

Prayer in CMA(MD). 1298/ 2013 :

Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicle Act 1988 against the Judgment and Decree dated 23.08.2012 passed in MCOP No.2373 of 2005 ont he file of the Honourable Motor Accident Claims Tribunal, V Additional District Court, Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.V.Pandiyan
for R.1 and R.2
in CMA(MD).NO.2002/2013 to 2005/2013
for R1 in CMA(MD).No.2006/2013 amd
CMA(MD).No.1298/2013

Mr.S.Suresh Kumar,
for R2 in CMA(MD).No.1298/2013

COMMON JUDGMENT

C.M.A.(MD)NOs.2002 to 2005 of 2013 and 1298 of 2013

It is a case of an injury caused in an accident took place on 27.06.2005 near Nakkalpatti towards Theni to Madurai main road. The injured claimants filed applications seeking compensation before the Motor Accident Claims Tribunal, Madurai and the Tribunal, considering the facts and circumstances of the case, awarded compensation to the respective claimants.

2. Aggrieved by the award, the appellant United India Insurance Company Ltd., preferred these appeals solely on the ground that the Insurance Company issued Act only policy and not a package policy. As per Act only policy conditions, the occupants in a private vehicle are not entitled to any compensation. In other words, the occupants in a private car are not covered under the Act only policy. Such being the conditions of the policy issued by the apellant Insurance Company, the Tribunal ought not to have granted compensation to the injured claimants. The victims are entitled to claim compensation only from the owner of the vehicle and not from the appellant Insurance Company.

3. To substantiate his argument, the learned Counsel appearing for the appellant contended that the Tribunal itself has observed the fact that it is Act only policy, which is marked as Ex.R.1. When the copy of the policy was also marked and the Tribunal also made a finding to that effect, the Tribunal further awarded the compensation without assigning proper reason and without analysing the nature of the policy which is Act only policy.

4. The learned Counsel for the respondents/claimants contended that the appellant Insurance Company had collected an extra premium of Rs.700/- and once an extra premium is collected, then it is obligatory to the appellant Insurance Company to cover all those occupants in a private vehicle. This apart, the learned Counsel for the respondents/claimants contended that the Courts also considered in the case of collection of extra premium, the compensation shall be granted. The collection of extra premium by the Insurance Company is in violation of the guidelines issued by IRDA.

5. This Court cannot go into these aspects and in respect of violation of IRDA guidelines, it is open to the respective parties to approach IRDA through complaints or under the procedure established under law. This Court has to go by the conditions of policy and in respect of liability on the appellant Insurance Company, the learned Counsel for the respondents/claimants is unable to say that even after collecting extra premium, the appellant Insurance Company had issued a fresh policy or issued any condition covering the occupants of a private vehicle. In the absence of a specific policy and its conditions, this Court cannot go by the oral submissions made by the learned Counsel for the respondents/claimants. In any event, it is a contractual obligation between the Insurance Company and the persons insured and the Court has to go by the principles of contract and not otherwise. Therefore, the policy document is a vital document to be seen before awarding any compensation under the policy. In certain cases, the Courts are interpreting for the benefit of the claimants only keeping in mind that it is a welfare legislation and is to be extended liberally to the injured victims. While liberalising the interpretation, the Court cannot shut up its eyes in respect of basic conditions of the policy and therefore, in respect of Act only policy, this Court is not inclined to consider the fact that it is covered the occupants of the private vehicle also. Accordingly, it is a case of Act only policy wherein the Tribunal had erroneously awarded compensation to the occupants of the private vehicle and hence, all these appeals deserve consideration and consequently, the award passed in M.C.O.P.Nos.243 of 2006, 244 of 2006, 245 of 2006, 246 of 2005, dated 02.03.2010 and M.C.O.P.No.2373 of 2005, dated 23.08.2012 are set aside and the Civil Miscellaneous Appeals are allowed. There shall be no order as to costs. Consequently, the connected

Miscellaneous Petitions are closed. The respondents/claimants are permitted to recover the amount of compensation awarded by the Tribunal from the owner of the vehicle in the manner known to law.

C.M.A.(MD)No.2006 of 2017

6. It is also a case of Act only policy. But the contention of the learned Counsel for the appellant is that "the owner cum driver" alone is entitled to seek compensation and the appellant Insurance Company is liable to pay compensation in the event of owner driving the vehicle which met with the accident. But in the present case, the owner was not driving the vehicle. Admittedly, even as per the findings of the Tribunal, he was travelling as a passenger. Such being the factual position, the owner is also exempted from the policy coverage and consequently, he is not entitled to claim compensation from the appellant Insurance Company.

7. In view of the above fact, this Civil Miscellaneous Appeal is also deserved to be considered along with other appeals and only with this additional fact that the respondnet/claimant is not the owner cum driver and no coverage for the Act only policy. This Court is inclined to consider the appeal and accordingly the award passed in M.C.O.P.No.247 of 2006, dated 02.032010 is set aside and the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

sd/-
Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
Principal Subordinate Court, Madurai.

2.The V Additional District Judge, Motor Accident Claims Tribunal, Madurai.

3.The Section Officer,
VR Section, Madurai Bench of Madras High Court, Madurai

+6cc to MR.G.Prabhu Rajadurai, Advocate SR.No.73666, 73667, 73668, 73669, 73670 & 73671

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