BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.04.2016
CORAM:
THE HONOURABLE MS. JUSTICE V.M.VELUMANI
C.M.A.(MD)No.694 of 2011
and
MP(MD)No.1 of 2011

The Divisional Manager,
Bajaj Allianz General Insurance Co.Ltd.,
129, Ram Nagar, Bye pass road,
Madurai.

...Appellant/2nd Respondent.

Vs.

1.V.Muneeswaran ...Respondent/Petitioner.
2.S.Uthayakumar ...Respondent/Respondent-1

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.01.2011 made in M.C.O.P.No.69 of 2007 on the file of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.A.Theethar for R1

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant / Insurance Company challenging the award dated 10.01.2011 in M.C.O.P.No.69 of 2007 passed by the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.

2.The appellant / Insurance Company is the 2nd respondent in M.C.O.P.No.69 of 2007. The 2nd respondent herein is the owner of the vehicle, insured with the appellant. The 1st respondent herein is the claimant. The claimant filed a claim petition before the Tribunal for the injuries sustained in an road accident claiming a sum of Rs.3,00,000/- as compensation.

3.The facts of the case are as follows: -

It is the case of the claimant before the Tribunal that on 21.07.2006 he was travelling in a goods vehicle bearing registration No.TN-59 AB-2115, carrying his household articles. When the vehicle was proceeding at Nagari to Thirumalpuram main road, the said vehicle capsized. Due to the accident, the claimant sustained grievous injuries. Immediately, he was taken to Government Rajaji Hospital, Madurai and took treatment from 21.07.2006 to 24.07.2006. A criminal case in Crime No.278 of 2006 was registered under Sections 279 and 337 IPC.

4.The age of the claimant was 26 years at the time of accident. He claimed a sum of Rs.3,00,000/- as compensation before the Tribunal.

5.The appellant / 2nd respondent / Insurance Company filed a counter affidavit, denying the various averments made by the claimant. According to the appellant / Insurance Company, the claimant had travelled as an unauthorized passenger in the 1st respondent's vehicle, which is in violation of policy condition and hence, the claimant is not entitled to any compensation.

6.The 1st respondent, owner of the vehicle, was set exparte before the Tribunal.

7.Before the Tribunal on the side of the claimant 4 witnesses were examined as P.Ws.1 to 4 and 10 documents were marked as Exs.P1 to P.10. On the side of the appellant / Insurance Company, 2 witnesses were examined as R.W.1 and R.W.2 and 5 documents were marked as Exs.R.1 to R.5.

8.After considering the oral and documentary evidence, the Tribunal came to the conclusion that accident occurred due to rash and negligent driving by the driver of the vehicle and the driver of the vehicle did not possess valid license. The vehicle was insured with the appellant / Insurance Company. But, the terms of insurance policy was violated. However, in view of violation of policy condition, applying the principle of pay and recovery, the Tribunal awarded a sum of Rs.1,43,506/- as compensation with 7.5% interest per annum to the claimant and directed the appellant to pay at the first instance and recover the said amount from the owner of the vehicle. Aggrieved by the said award, the present appeal is filed by the appellant / Insurance Company.

9.The learned counsel for the appellant / Insurance Company submitted that the present appeal is filed questioning the finding rendered by the Tribunal with regard to liability of appellant to pay the compensation. The learned Judge failed to see that the 1st respondent is an unauthorized passenger and driver of the vehicle did not possess valid licence. The compensation awarded is excessive.

10.Per contra, the learned counsel for the 1st respondent / claimant has made his submissions by contending that the finding of the Tribunal is proper and the award amount is very low. The respondent has proved the disability by proper evidence. The learned Judge has rightly ordered pay and recovery.

11.Heard the learned counsel for the appellant and the learned counsel appearing for the 1st respondent / claimant and perused the entire materials on record.

12.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record, It is proved that vehicle of the 2nd respondent was insured with the appellant. The appellant alleged that the 1st respondent was an unauthorized passenger, but did not prove the same. On the other hand, proved that the driver did not have valid driving licence and thereby violated the terms of insurance policy. The Hon'ble Apex Court has held that in case of violation of terms of insurance policy, the Insurance Company may be directed to pay the compensation amount and recover the same from the owner. Applying this principle the Tribunal ordered pay and recovery. The Tribunal considering the nature of injury and percentage of disability, awarded Rs.2000/- per percentage and amounts on other heads. I do not find any infirmity in the award passed by the Tribunal in directing the appellant / Insurance Company to pay the award amount and thereafter, recover the same from the owner of the vehicle and the Tribunal has given valid reasons in awarding compensation in respect of all heads. The reasoning of the Tribunal is proper and there is no reason to set aside the said conclusion.

13.In view of the above, the appellant / Insurance Company is directed to pay the compensation amount of Rs.1,43,506/- as fixed by the Tribunal with 7.5% interest per annum to the claimant and later recover the same from the owner of the vehicle. However, the mode of recovery shall be made as follows:

> "For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

14.In the result, the Civil Miscellaneous Appeal is dismissed and judgment and decree 10.01.2011 in M.C.O.P.No.69 of 2007 passed by the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai, is confirmed. No costs.

15.The appellant / Insurance Company is directed to deposit the entire award amount together with interest, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the compensation, on filing proper application. Consequently, connected M.P.is closed.

Sd/
Assistant Registrar(Cs-I)

/True Copy/

Sub Assistant Registrar.

To
The Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.
+1CC to M/S.J. Gunaseelan Muthiah, Advocate, SR.No. 21481

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MP(MD)No.1 of 2011
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