BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.1457 of 2016
and
C.M.P(MD)No.12149 of 2016

The Branch Manager,
United India Insurance Co. Ltd.,
Nagercoil. ... Appellant/2nd Respondent

Vs.

1.Alphonse Raja ... 1st Respondent/Petitioner

2.Rajagopalan ... 2nd Respondent/1st Respondent

3.T.Sasikumar ... 3rd Respondent/3rd Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2005 made in M.C.O.P.No.1208 of 2002 on the file of the Motor Accident Claims Tribunal – Additional District Judge/Fast Track Court No.1, Tirunelveli.

For Appellant : Mr.S.Muthalraj
For Respondents : Mr.T.Selvakumaran for R.1
R.2 & R.3 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 31.01.2005 passed in M.C.O.P.No.1208 of 2002 by the Motor Accident Claims Tribunal – Additional District Judge/Fast Track Court No.1, Tirunelveli.

2. Facts-in-nutshell for the disposal of this appeal, are as follows:

2.1. On 14.03.2002, the first respondent/claimant was riding his motorcycle bearing Registration No.TN-72-V-7113 from his shop at Vallioor for collecting the installment amounts from the purchasers along with his friend, Thangaraj, who was a pillion rider. While the motorcycle was proceeding from north to south on the extreme left side of Tirunelveli – Kanyakumari main road, a lorry bearing Registration No.KL-06-1575 belonging to the third respondent herein was driven by its driver in a rash and negligent manner and came behind the motorcycle and dashed against the same, due to which, the first respondent/claimant as well as the pillion rider fell down and sustained injuries. When they tried to get up from the spot, another lorry bearing Registration No.KL-01-B-1103 belonging to the second respondent herein was driven by its driver in a rash and negligent manner from south to north and ran over the motorcycle, the first respondent/claimant and the pillion rider, as a result of which, both of them sustained fractures and multiple injuries all over their bodies. A case in Cr.No.64 of 2002 was registered against the drivers of both the vehicles and the same is pending before the Judicial Magistrate Court, Vallioor. Immediately, the first respondent/claimant was taken to Dr.Thiraviam Hospital, Tirunelveli Main Road, Thirupathisaram Post, Kanyakumari District on 14.03.2002 itself and admitted as an inpatient. His right leg was amputated upto ankle. According to the first respondent/claimant, he was doing business in Cots and Tables and other utensils on installments basis and earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only) and due to the accident, he could not do his work as he was doing earlier. Therefore, he filed the claim petition claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

2.2. The respondents 2 and 3 remained exparte before the Tribunal.

2.3. The appellant-Insurance Company filed the counter statement denying all the averments stated in the claim petition and contended that on the date of the accident, i.e. on 14.03.2002, the vehicle bearing Registration No.KL-06-1575 belonging to the third respondent herein was not insured with the appellant-Insurance Company and it was insured only from 16.03.2002 and also contended that the accident took place only due to the rash and negligent driving of the driver of the lorry bearing Registration No.KL-01-B-1103 and therefore, prayed for the dismissal of the claim petition.

2.4. Before the Tribunal, on the side of the first respondent/claimant, P.W.1 to P.W.4 were examined and Exs.P.1 to P.18 were marked. On behalf of the appellant-Insurance Company, R.W.1 was examined and Exs.R.1 and R.2 were marked.

2.5. On contest, the Tribunal, considering the pleadings, oral and documentary evidence let in on either side, found that the accident occurred only due to the rash and negligent driving of the drivers of both the vehicles and fastened the liability on the second respondent herein and the third respondent herein at the ratio of 50 : 50, however, directed the appellant-Insurance Company to pay the compensation to the first respondent/claimant and recover the same from the third respondent herein.

2.6. Aggrieved over the same, the appellant-Insurance Company has filed the present appeal.

3. The learned Counsel for the appellant-Insurance Company

submitted that the Tribunal erred in directing the appellant-Insurance Company to pay 50% of the compensation to the first respondent/claimant indemnifying the third respondent herein/owner of the offending vehicle bearing Registration No.KL-06-1575 and subsequently, recover the same from the third respondent herein and that the Tribunal failed to see that the vehicle belonging to the third respondent herein was not insured with the appellant-Insurance Company on the date of the accident and therefore, the appellant-Insurance Company is not liable to pay any compensation and 'pay and recovery' theory would be applicable, only if there is a violation of policy conditions or permit conditions.

4. Per contra, the learned Counsel for the first respondent/claimant contended that even if there is no insurance policy as on the date of accident, the insurer must pay the compensation to the claimant and subsequently, recover the same from the owner of the offending vehicle.

5. Heard the learned Counsel for the appellant-Insurance Company and the learned Counsel for the first respondent/claimant and perused the materials available on record.

6. The respondents 2 and 3/owners of the offending vehicles remained exparte before the Tribunal and hence, notice to them is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in ***Mrs.Jamunabai v. Chhote Singh*** reported in ***I (2004) ACC 190 (FB)***.

7. From the records, it is seen that there is no insurance policy issued by the appellant-Insurance Company to the vehicle belonging to the third respondent herein as on the date of accident. In these circumstances, the contention of the learned Counsel for the first respondent/claimant that even if there is no insurance policy as on the date of the accident, the appellant-Insurance Company is liable to pay the compensation and recover the same from the owner of the offending vehicle, is untenable and the same has no force. When there is no insurance policy as on the date of accident, the question of appellant-Insurance Company paying the compensation to the first respondent/claimant at the first instance and recovering the same from the owner of the offending vehicle, does not arise at all. Accordingly, the award of the Tribunal in directing the appellant-Insurance Company to pay the compensation to the first respondent/claimant at the first instance and recover the same from the owner of the offending vehicle is liable to be set aside.

8. Insofar as the quantum of compensation and also the liability fixed on the third respondent herein/owner of the offending vehicle bearing Registration No.KL-6-1575, are concerned, this Court, considering the evidence available on

record, is of the view that the Tribunal awarded a just compensation based on the evidence let in before the Tribunal by way of adducing oral and documentary evidence and the appellant-Insurance Company has not made out a case to interfere with the compensation awarded by the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal in directing the appellant-Insurance Company to pay the compensation to the first respondent/claimant at the first instance and recover the same from the third respondent herein/owner of the offending vehicle alone, is set aside and the appellant-Insurance Company is exonerated from its liability to pay the compensation amount. The first respondent/claimant is at liberty to work out his remedy to get the compensation amount from the owner of the vehicle bearing Registration No.KL-06-1575 in the manner known to law. The appellant-Insurance Company is permitted to withdraw the amount deposited by them, if any, before the Tribunal. If the appellant-Insurance Company has already deposited the award amount before the Tribunal and the first respondent/claimant has withdrawn the same, the appellant-Insurance Company is not entitled to recover the same from the first respondent/claimant, however, it is open to the appellant-Insurance Company to recover the same from the third respondent herein/owner of the offending vehicle No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal - cum –
Additional District Judge/Fast Track Court No.1,
Tirunelveli.

RSB
TE/KP/SAR-III : 25/04/2017 : 4P/2C

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C.M.P(MD)No.12149 of 2016
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