BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.706 of 2017
and
C.M.P.(MD).No.7492 of 2017

United India Insurance Company Limited,
Door No.84/28, Ist Floor,
Vadakku Ratha Veethi,
Ambasamuthram,
Tirunelveli District. ... Appellant/2nd Respondent

Vs.

1.Palaniammal ... 1st Respondent/Petitioner

2.Arumugam ... 2nd Respondents/1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.02.2017 made in M.C.O.P.No.13 of 2012, on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.R.J.Karthick for R1
No Appearance for R2

JUDGMENT

Heard the learned counsel on either side.

2.The Insurance company has filed this appeal questioning the impugned award on the ground of liability. The vehicle in question is a two-wheeler. It belonged to one Arumugam. On 19.10.2011, the deceased Ayappan was borrowed the vehicle from the said Arumugam and had ridden the vehicle. It is alleged that due to sudden crossing of the road by a pig, the rider lost his balance and fell on the road. He suffered injuries and died. The mother of the deceased filed M.C.O.P.No.13 of 2012, dated 22.02.2017, on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi. The Tribunal awarded a sum of Rs.9,49,000/- as compensation with interest. The appellant herein was directed to pay the said amount.

Questioning the impugned award, the Insurance company has filed this appeal.

3.The learned counsel appearing for the appellant would contend that the liability of the Insurance company is that of indemnifier only if the vehicle owner is fastened with the liability. Then and then alone, the Insurance company can be called upon to satisfy the award if the policy is in force. In the present case, the Tribunal has not fastened any liability on the owner. As such, without fixing the liability on the owner, the question of calling upon the Insurance company to satisfy the award would not arise.

4.The learned counsel appearing for the claimant relied on the decision of the Patna High Court reported in ***2014 (2) TN MAC 735 (Pat.) United India Insurance Company Limited & another Vs. Sudha Singh & Others.*** In the said case, the learned Judge of Patna High Court took a view that the policy in question is a package policy and not a mere Act policy. Then the Insurance company can be directed to satisfy the claim arising from the third party. The contention is that in the present case, since the deceased was not the owner of the vehicle, he must be considered as a third party. This Court is not in a position to agree with the said submission. Whether the policy in question is an Act policy or a package policy is really irrelevant. The Insurance company can be called upon to satisfy the award only as an indemnifier and not in any other capacity. In this case, the deceased was a borrower of the vehicle. Due to sudden crossing of the road by a pig, he lost his balance and died. The issue is whether the vehicle owner can be fastened with negligence and consequently liable. In as much as cannot be visited, this cannot be done in this case, consequently liability on the appellant Insurance company.

5.This Court is therefore constrained to set aside the award dated 22.02.2017 made in M.C.O.P.No.13 of 2012, on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi. But that is not the end of the matter. It is admitted that the policy in question had a personal accident coverage for a sum of Rs.1,00,000/-. Even though, the claim arising out of Personal accident coverage cannot be pressed before the Motor Accident Claims Tribunal, in the facts and circumstances of this case, this Court directs the appellant to pay the said sum of Rs.1,00,000/- to the claimant with interest at the rate of 7.5% per annum from the date of claim petition till date of payment.

6.The award dated 22.02.2017 made in M.C.O.P.No.13 of 2012, on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi is modified accordingly.

7.The appellant is directed to deposit the entire compensation amount of Rs.1,00,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by her, if any, by filing proper application before the Tribunal. The learned counsel appearing for the appellant would submit that they have deposited 50% of the award amount. The appellant Insurance company is permitted to withdraw the balance amount, if any.

8.This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD- II)

/ True Copy /

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
   The Additional Sub Judge, Tenkasi.

2. Mr.Arumugam,
   S/o.late Subbiah,
   Kannuppulimettu Road, Mottai,
   Senkottai Taluk,
   Tirunelveli District.

Copy To:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 88902

TSG
TE/JC/SAR-3 : 16/03/2018 : 3P/6C

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