BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A(MD)No.199 of 2013
and
M.P.(MD)No.1 of 2013

The Divisional Manager,
United India Insurance Co.Ltd.,
South Min Street,
Thanjavur. ... Appellant/2nd Respondent

Vs.

1.V.Baskaran ... 1st Respondent/Petitioner

2.M/s.Madhucon Projects Ltd,
3/252, Tanjore Main Road,
Devarayanery Opposite Police Check Post,
Trichy-620 015. ... 2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2012 passed in M.C.O.P.No.45 of 2011 on the file of the Hon'ble Motor Accidents Claims Tribunal,(Principal Subordinate Judge) Thanjavur and set aside the same.

For Appellant	:	Mr.G.Prabhu Rajadurai
For R1	:	Mr.S.Deenadhayalan
For R2	:	No Appearance.

O R D E R

This appeal has been filed against the judgment and decree dated 29.06.2012 passed in M.C.O.P.No.45 of 2011 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Thanjavur and set aside the same.

2.The primary ground of challenge by the Appellant insurance company in this instant appeal is that the subject insurance policy is a plant and machinery policy and therefore the said policy, does not cover the risk of a third party. According to the learned counsel for the appellant, the policy covers only the loss due to the machineries of the insured and is not a policy under the Motor Vehicle Act. According the learned counsel for the Appellant, the Tribunal ought to have exonerated the appellant from paying any compensation as the said vehicle was not insured with the Appellant.

3.In similar set of facts, this Court by its recent judgment dated 12.10.2017 in C.M.A(MD)No.552 of 2017 (The Manager, United India Insurance Company Vs Saranya & others) has held that under a plant and machinery insurance policy, the insurance company is not liable to pay compensation for third party claims. dealt with the same type of policy and held that the insurance company is not liable to pay compensation. The relevant paragraphs of the said judgment is extracted here under:-

*"3.The poclain in question is no doubt a motor vehicles. It is an excavator and would fail within the definition set out in Rntral Moto***r Vehicle Rules 1989.** *There are decisions of the* ***High Court of Himachal Pradesh*** *reported in 2017 ACJ 181 and the* ***High Court of Chhattisgarh at Bilaspur 2015 ACJ 1674*** *which are to the effect that the JCB is also a motor vehicle. Therefore, the claim petition filed before the Tribunal is very much maintainable. The question is whether the appellant insurance company can be fastened with the liability.*

4.The learned counsel for the appellant pointed out that the vehicle owner had taken contractor plan and machinery insurance policy only. The copy of the said policy is also enclosed in the typed set of papers. The said policy contemplates payment by the insurance company only in respect of physical damage to the vehicle. There is no question of making the insurance company liable in the case of third party claims. The learned counsel appearing for the appellant placed reliance on the decisions of ***High Court of Karnataka in 2010 3 AIR (Kar) (R) 761: 2007 0 Supreme (Kar) 872 and another decision of the Rajasthan High Court in the case of the New India Assurance Co.Ltd Vs.M/S.Oswal Machinery stgore & Others (Civil Miscellaneous Appeal No.1102/1998).***

5.In both the cases, what was in force was only contractors plant and machinery insurance policy. If the appellant is to be saddled with liability, it will be in complete violation of the terms and conditions set out in the policy in question. The liability of the appellant is only contractual liability and not statutory liability.

6.The learned counsel appearing for the claimants is not in a position to show as to how under terms of an plant and machinery policy, the appellant can be saddled *with liability. I am therefore of the view that the Tribunal erred in holding the appellant also as liable to pay the compensation. Of course, the deceased was the employer of the fifth respondent. The petition filed before the Tribunal is very much maintainable.*

7.Therefore, the award passed against the fifth respondent will stand and it is confirmed. The appellant insurance company is alone exonerated. The award passed by the Tribunal is accordingly modified. It is open to the claimant to proceed against the fifth respondent herein to enforce the award impugned in this appeal. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

4.The learned counsel appearing for the first respondent is unable to produce any contra judgment for disproving the contention of the Appellant.

5.This Court after perusing the materials available on record including the award of the Tribunal and after hearing the submissions of the learned counsels on both sides is of the considered view that the Tribunal ought not have passed an award against the Appellant since the subject insurance policy is a plant and machinery policy and is not a policy under the Motor Vehicles Act.

6.In the result the Civil Miscellaneous Appeal is allowed. Consequently, the award passed in M.C.O.P.No.45 of 2011 dated 29.06.2012 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Thanjavur as against the appellant is set aside and the award shall hold good only as against the second respondent/the owner of the vehicle. In case, the first respondent has not withdrawn the award amount of Rs.2,70,792/- which was deposited by the appellant insurance company before the Tribunal while obtaining the order of interim stay, this court permits the Appellant insurance company to withdraw the same from the tribunal by filing appropriate application. If the first respondent has withdrawn the award amount, the appellant insurance company is permitted by this Court to recover the same from the owner of the vehicle, namely the second respondent herein. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

+1 cc to Mr.G.Prabhu Rajadurai, Advocate, IN SR No.93776
+1 cc to Mr.S.Deenadayalan, Advocate, IN SR No.93446

C.M.A(MD)No.199 of 2013
and
M.P.(MD)No.1 of 2013
18.12.2017

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PK/CM/SAR-1/05.06.2018 : 4P/4C