IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.104 of 2015 and
M.P.No.1 of 2015

M/s.United India Insurance Company Ltd.,
52, Katcheri Road,
A.K.T. Complex,
Kallakurichi,
Villupuram District. ... Appellant

Vs

1.C.Paneerselvam
2.N.Raju ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 28.02.2013 in M.C.O.P.No.754 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Salem.

For Appellant : Ms.Sree Vidhya

For Respondents : Mr.S.P.Yuvaraj for R1

O R D E R

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company against the award dated 28.02.2013 passed in M.C.O.P.No.754 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Salem.

2. Brief facts are that on 07.02.2008 at about 12.00 hours, the 1st respondent was travelling in the tractor bearing registration No.TN-32-S-7737 as load man and when the tractor was nearing Moongipipady Pachaiamman Koil, the driver of the tractor drove the same in a rash and negligent manner, lost his control and hit against the mile stone and that the tractor was capsized. Due to the impact, the 1st respondent sustained grievous injuries. Immediately after accident, the 1st respondent was admitted in the Government Hospital, Attur where he was given first aid and thereafter, shifted to the Government

MLMC Hospital, Salem, where he had taken treatment as inpatient for 40 days. Regarding the accident, a case in Crime No.66 of 2008 under Section 279 and 337 IPC was registered on the file of the Chinnasalem Police Station against the driver of the tractor. At the time of accident, the 1st respondent was doing loading and unloading coolie work and was earning Rs.6,000/- per month. The 2nd respondent is the owner of the tractor and the appellant is its insurer. Stating that the accident occurred due to rash and negligent driving of the driver of the tractor, the 1st respondent filed the claim petition claiming compensation of Rs.10,00,000/- for the injuries sustained by him in the accident.

3. Resisting the claim petition, the appellant has filed counter stating that the 1st respondent was an unauthorized passenger in the tractor, thereby contributed to the accident and that the accident did not occur as alleged in the claim petition. The 1st respondent was not employed as loading and unloading collie and he was only a gratuitous passenger. It is stated that the accident was not due to the negligence of the driver of the tractor. The 1st respondent was the residence of Ammaiyagaram, Kallakurichi Taluk and the accident took place within the limits of Chinnasalem Police Station and the claim petition filed before the Salem Court is not maintainable and on the question of jurisdiction point, the claim petition is liable to be dismissed. The appellant also denied the age, occupation and the monthly income of the 1st respondent. The total claim made by the 1st respondent was excessive and prayed for dismissal of the claim petition.

4. Before the Tribunal, 1st respondent examined himself as P.W.1 and one Dr.Sridhar was examined as P.W.2 and marked Exs.P1 to P18. On the side of the appellant, one Jayavel was examined as R.W.1 and marked Ex.R1.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the tractor. It was held that the Motor Vehicles Act, 1988 provided compulsory insurance of vehicles against third party risk was a social welfare legislation to extend relief by compensation of victims of accidents caused by use of motor vehicles. At the time of accident, the insurance was in force and the same was evidenced from Ex.R1-policy and therefore, the appellant was liable to pay compensation of Rs.6,56,450/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

6. Challenging in this appeal is only liability of the appellant to pay compensation to the 1st respondent/victim.

7. The learned counsel for the appellant Insurance Company submitted that without appreciating terms of policy, the Tribunal erred in fastening the liability on the appellant and also the Tribunal failed to note that the seating capacity of the tractor is one and as such the offending tractor has no extra seating capacity except the driver and therefore, there was no room for any coolies to sit or initiated to design the same. The learned counsel further submitted that the Tribunal has failed to note that the policy covers only the driver and not any other person and admittedly, the policy did not cover the risk of workman or any other employees and as such covering the risk or collecting premium does not arise. In these circumstances, the learned counsel for the appellant prayed for setting aside the award of the Tribunal.

8. Per contra, the learned counsel for the 1st respondent argued that at the time of accident, the 1st respondent was travelling as loading and unloading coolie in the tractor and upon appreciating the oral and documentary evidence, the Tribunal has rightly fastened the liability on the appellant Insurance Company and awarded compensation in favour of the 1st respondent.

9. The main contention of the appellant in this appeal is that there was no load in the tractor at the time of accident and the tractor has no extra seat capacity except the driver and that the 1st respondent travelled on the mudguard and therefore, the accident occurred only due to the negligence of the 1st respondent.

10. The accident was admitted by the appellant Insurance Company. To disprove that at the time of accident, the 1st respondent was not travelled in the offending tractor, no document was produced by the appellant Insurance Company. Thus, the Tribunal was right in holding that at the time of accident, the 1st respondent was travelling in the offending tractor as loading and unloading coolie.

11. When a load man of the tractor was found travelling, sitting on the mudguard, sustained injuries due to the accident, the owner and the insurer of the tractor are jointly and severally liable to pay the compensation to the victim.

12. In the case on hand, the Tribunal upon analyzing evidences produced before it, rightly fastened the liability on the appellant, who is the insurer of the tractor in question, as at the time of accident, the insurance policy was in force covering the risk. In the present case, the Tribunal has described, how seating place has been provided for one more person to sit, apart from the driver. As stated supra, the

policy covers the load man also. Therefore, the appellant Insurance Company cannot escape from the liability to pay the compensation.

13. In a catena of decisions, the Hon'ble Supreme Court as well as this Court held that in respect of the death/injury of a person, sitting on the mudguard of the tractor, it is only the Insurance Company, liable to be pay the compensation.

14. The appellant Insurance Company has not disputed the coverage of policy of the tractor at the time of accident. On a perusal of the copy of the policy produced, it is seen that in the schedule of premium, it has mentioned as “legal liability to driver coolies/other employees in connection with the operation and/or maintaining and/or unloading of Motor Vehicles” and to that effect the appellant Insurance Company has also collected premium. When such being the fact, the appellant Insurance Company cannot escape from liability to pay the compensation to the 1st respondent.

15. In New India Assurance Company Limited v. Govindaraj and others, reported in 2010(1) TN MAC 231, it has been held as under:

> “7. According to the appellant, the deceased was travelling in the Trailor which was not covered. Ex.R1 is the Insurance Policy under which a premium has been paid for an employee. If the Insurance Company takes the plea that no one can travel in a Tractor along with the driver, the acceptance of the premium for an employee is questionable? Once the Insurance Company accepted a premium for an employee in a policy for a Tractor then the employee who was travelling in the tractor is covered under the policy. There is no bar that he cannot travel in the Tractor along with driver. Necessarily he has to travel in the Tractor or in any other vehicles attached to the Tractor for which it is engaged. In this case, the Insurance Company is liable to pay compensation and it cannot escape from such liability.”

16. The appellant, having accepted the premium for an employee under the insurance policy for tractor, cannot contend that no one can travel in the tractor. Once the appellant accepted the premium for an employee, the employee travelling in the tractor is covered under the policy. Therefore, the appellant Insurance Company is liable to pay compensation to the 1st respondent and the Tribunal was right in fastening the liability on the appellant Insurance Company and therefore, no interference is required.

17. Since the appellant Insurance Company has not challenged the quantum of compensation awarded by the Tribunal, there is no need to discuss the said point. However, when this Court looks into the quantum of compensation awarded by the Tribunal, this Court finds that the Tribunal was right in fixing the monthly income of the 1st respondent at Rs.3,000/- per month in the absence of proof by the 1st respondent to show that he was earning Rs.6,000/- per month at the time of accident. Considering the injuries sustained by the 1st respondent in the accident and the treatment undergone by him, the Tribunal has rightly adopted multiplier method and awarded Rs.5,76,000/- towards 100% disability. It is pertinent to mention that due to the accident, the 1st respondent's right leg was amputated. Therefore, a sum of Rs.5,76,000/- awarded by the Tribunal towards 100% disability is just and reasonable.

18. Qua other heads viz., pain and suffering; extra-nourishment; transport to hospital; loss of income; mental agony and x-ray bill, the amount awarded by the Tribunal under those heads are also just and reasonable. Thus, the total compensation of Rs.6,56,450/- awarded by the Tribunal in favour of the 1st respondent is quite, just and reasonable and the same are maintained, as there was no challenge on the quantum of compensation awarded by the Tribunal.

19. For the foregoing reasons, this Court is of the view that the award of the Tribunal challenged in this appeal warrants no interference and upon appreciating the oral and documentary evidence only, the Tribunal has fastened the liability on the appellant Insurance Company and awarded compensation. Therefore, the appeal preferred by the appellant Insurance Company is liable to be dismissed.

20. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the 1st respondent is entitled to withdraw the entire award amount with accrued interest on filing appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
I Additional Sub Court,
Salem.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 62221
+1cc to Mr.SP.Yuvaraj, Advocate, S.R.No. 61222

C.M.A.No.104 of 2015 and
M.P.No.1 of 2015

CP(CO)
GN(28/11/2018)