IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2855 of 2018
and C.M.P.No.21707 of 2018

United India Insurance Co.Ltd.,
Perundurai, Erode District. ..Appellant/2nd Respondent

Vs.

1.Rangasamy ..1st Respondent/Claimant

2.Krishnamoorthy ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.07.2017 made in M.C.O.P.No.129 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

For Appellant : Mr.C.Paranthaman

For R1 : Mr.N.S.Sivakumar

For R2 : Mr.P.Kaviri Nadan for Mr.N.Manokaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 20.07.2017 made in M.C.O.P.No.129 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.129 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram. The first respondent/claimant filed the above claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.12.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the van/second respondent and directed both the appellant being the insurer of the said van as well as the second respondent to pay a sum of Rs.3,45,986/- as compensation to the first respondent/claimant, jointly and severally.

4.Against the said award dated 20.07.2017 made in M.C.O.P.No.129 of 2012, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal.

5.The learned counsel appearing for the appellant/Insurance Company contended that the first respondent travelled in the commercial goods vehicle as passenger. The policy issued by the appellant is only an Act policy and the loadmen are not covered. At the time of accident, more than the permitted persons travelled in the vehicle and the second respondent/owner-cum-driver of the van was prosecuted under Section 192A of the Motor Vehicles Act for violating the provisions of the Motor Vehicles Act. Five persons travelled in the van instead of two persons. As per the judgment of the Hon'ble Apex Court reported in 2003 ACJ (1) (United India Insurance Company Limited vs. Asha rani), passenger, who travelled in a goods vehicle is not entitled to make a claim against the insurer. The Tribunal has failed to consider Ex.R1/insurance policy, which is only an Act policy. At the time of taking insurance for the period from 13.07.2010 to 12.07.2011, one M/s.Apex Apparels Corporation, No.199, Gandhi road, Anuppampalayam, Tiruppur, was the owner of the van and subsequently, the second respondent became the owner of the said van and he was shown as owner of the said van from 22.07.2010 and the accident occurred on 06.12.2010. The claim petition is not maintainable for non-joinder of necessary parties. As far as the quantum of compensation is concerned, the Medical Board has certified that the first respondent suffered 35% disability. The first respondent has not proved that he suffered functional disability and he cannot do the agricultural work and therefore, the Tribunal has erred in adopting multiplier method. The Tribunal ought to have awarded compensation on percentage basis. The Tribunal has erred in granting compensation towards both the loss of earning capacity as well as disability. The amounts awarded by the Tribunal under those heads are excessive and contrary to the judgments of this Court as well as the Hon'ble Apex Court and prayed for setting aside the award passed by the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent/claimant contended that the first respondent travelled in the vehicle along with cows purchased at Kangeyam. He travelled in the goods vehicle as owner of the goods and therefore, the appellant is liable to pay compensation to the first respondent. The first respondent in his evidence has deposed that due to the injuries sustained by him in the accident, he is unable to do his work as he was doing earlier. The appellant has not disproved such evidence. In view of disability suffered by the first respondent as certified by the Doctor, the Tribunal has applied multiplier method for granting compensation towards loss of earning capacity as well as disability and the same is proper. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7.The learned counsel appearing for the second respondent/owner of the vehicle contended that when the second respondent purchased the vehicle, the insurance policy issued by the appellant to the erstwhile owner automatically got transferred to the second respondent, who became owner as the policy is issued in respect of the vehicle and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

9.From the materials available on record, it is seen that the first respondent has stated that he and others travelled in the vehicle belonging to the second respondent along with cows purchased by them at Kangeyam. When they were travelling along with the cows as owners, the accident occurred due to rash and negligent driving by the second respondent, who is owner-cum-driver of the said vehicle. The appellant has not let in any evidence to disprove this contention. During cross-examination, no suggestion was put to the first respondent that he did not travel along with cows. As per Section 147(1)(b)(i) of the Motor Vehicles Act, the owner of the goods, who travelled in the goods vehicle along with his goods namely, cows is also covered by policy issued by the Insurance Company. Further, as per Rule 236 of Tamil Nadu Motor Vehicles Rules, up to six persons can travel in the commercial vehicle along with the goods. In view of the same, the contention of the learned counsel for the appellant that the first respondent and others travelled as passengers in the goods vehicle and they are not covered by Ex.R1/policy is without merits.

10.As far as quantum of compensation is concerned, the Medical Board has certified that the claimant and others suffered 35% disability. The first respondent in his evidence has stated that he is unable to do his agricultural work as he was doing earlier. The appellant except examining R.W.1 and marking Ex.R1 policy has not let in any contra evidence to disprove the contention of the first respondent that he has suffered functional disability. In view of the same, the Tribunal has granted compensation by applying multiplier method and the same is proper.

11.It is well settled that in a given case, the Court has power to award compensation towards both the loss of earning capacity as well as disability. In the present case, based on the materials available on record, the Tribunal has awarded compensation towards both the loss of earning capacity as well as disability. There is no error in the award of the Tribunal warranting interference by this Court.

12.The contention of the learned counsel for the appellant that the claim petition is not maintainable for non-joinder of parties is not acceptable. Section 157 of the Motor Vehicles Act, which deals with the transfer of certificate of insurance, reads as follows:

> "157. Transfer of certificate of insurance.
>
> (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
>
> Explanation - For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.
>
> (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

As per the above Section, when the second respondent purchased the vehicle, the insurance policy issued by the appellant to the erstwhile owner automatically got transferred to the second respondent, who became owner as the policy is issued in respect of the vehicle.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The appellant/Insurance Company and the second respondent are directed to deposit the award amount granted by the Tribunal along with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the entire award amount along with interest and costs, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

kj

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal,
The Subordinate Judge, Dharapuram.

+1cc to Mr.N.S.Sivakumar, Advocate,SR.No.87805
+2cc to Mr.C.Paranthaman, Advocate,SR.No.87647
+1cc to Mr.N.Manokaran, Advocate, SR.No.87601

C.M.A.No.2855 of 2018
and
C.M.P.No.21707 of 2018

Kak(24/04/2019)