IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 01.10.2018

DELIVERED ON 29.01.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2952 of 2005
and CMP. No. 15379 of 2005

National Insurance Co.Ltd.,
Tiruppur ...Appellant/2nd Respondent

Vs.

1. K.Thangaraj ...1st Respondent/Petitioner

2. S.Gopalakrishnan ...2nd Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 25.04.2005 passed in MCOP. No. 1065 of 2002 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Erode.

For Appellant : Mr.S.Arunkumar

For Respondent : Mr.N.Manoharan - R1

JUDGMENT

This Civil Miscelleneous has been preferred against the judgement and decree 25.04.2005 passed in MCOP. No. 1065 of 2002 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Erode.

Brief facts leading to the claim application are as follows;

2. On 22.05.2001 at about 4.30 pm when the petitioner was driving his Maruthi Car bearing registration No. TN 33 E 6411 from East to West near KMCH Hospital on the Avinashi road at Coimbatore, Peelamedu in a normal speed and stopped the car due to the traffic, at the time a Jeep bearing registration No. TN 39 P 8328 driven by its driver in a rash and negligent manner in the same direction and dashed on the back side of the Maruthi Car and caused heavy damage to the Car. Due to that, the rear body sheet, rear bumper, cowl, front left side head light, radiator and other mechanical parts of the Car were damaged

heavily. The driver of the jeep, who came in a rash and negligent manner is solely responsible for the said accident. Hence, the petitioner has claimed a sum of Rs.1,00,000/- towards compensation.

3. The 2nd respondent/ Insurance company in their counter statement denied the claim made by the petitioner. The negligent driving on the part of the jeep driver as stated by the petitioner was also very much denied. It is further stated that the petitioner has to establish the rash and negligent on the part of the 1st respondent and to prove that the 1st respondent was holding a valid driving license on the date of the alleged accident and also to prove that there is a policy for his vehicle TN 39 P 8328. On the whole, it is the contention of the 2nd respondent that the petitioner is not entitled to claim any compensation and further stated even assuming without admitting the liability, the petitioner cannot claim more than Rs.6,000/- as the statutory limit of the policy in question, as against the 3rd party damages is limited to Rs.6,000/-

4. The tribunal upon analysing the oral pleadings and documents, has given finding that due to the negligence on the part of the 1st respondent driver the said accident had occurred and the petitioner's vehicle also got damaged. Hence, by considering the Exhibits 9 & 13 Medical Bills and Survey Report respectively, produced by the petitioner, the tribunal has granted Rs. 51,000/- towards total compensation.

5. Aggrieved against the said judgment and decree, the Insurance Company has preferred this Appal.

6. In the ground of appeal, the appellant has stated that the tribunal has erred in holding that the appellant is liable to pay entire compensation of Rs.51,000/- and also not properly considered the evidence of RW1 and Ex.B1 Police copy while determining the compensation. It is also stated that the as per section 147 of Motor Vehicle Act, the third party damage is limited to Rs.6,000/-. The further ground raised in the appeal is that the 2nd respondent has not paid any additional premium to cover the rist of increased third party property damage claim. The interest at 9% per annum for the award amount of Rs.50,000/- also very much contended by the appellant in the grounds of appeal.

7. Heard both sides and perused the documents available on record.

8. On the side of the appellant it is argued that no proper evidence has been placed by the petitioner to claim a sum of Rs.51,000/- for damages to the said vehicle. Further, it is also argued that the petitioner is entitled only a sum of Rs.6,000/- as against the third party damages. Hence prayed to set aside the award passed by the tribunal.

9. On a perusal of the records, it is observed that the tribunal has given finding that it is the first respondent, who is responsible for the accident, which resulted in damages to the Maruthi Car of the Petitioner. The First Information Report was also registered against the first respondent and the Charge Sheet Ex.P5 was also against the first respondent, who is the driver of the Jeep. Hence, based on the documents, the tribunal has fixed the liability on the first respondent.

10. With regard to damages Exhibits 9 to 13 were filed before the tribunal. The said documents proves the fact that the damages are to the extent to a sum of Rs.51,000/-. The said damages were assessed by the Motor Vehicle Surveyor. It is seen that on the side of the Insurance Company, before the tribunal, Ex. R1 Policy copy was submitted, in which it has been clearly mentioned that for the 3rd party damage Rs. 6,000/- is eligible.

11. It is the argument of the appellant that the claimant is entitled for compensation only to the extent of Rs.6,000/- as per Section 147 of the Motor Vehicle Act. It is seen from the award that the tribunal on considering the documents submitted by the petitioner, which were marked as Exhibits P9 to P13 substantiating his claim for Rs.51,000/- and awarded the same and directed to be paid by the 1st & 2nd respondents therein jointly and severally .

Section 147 2(b) of Motor Vehicles Act reads as follows;
2(b). In respect of damage to any property of a third party, a limit of rupees six thousand;

12. The learned counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court reported in I (2002) ACC 299 (SC) in the case of New India Assurance Co. Ltd., Vs. C.M. Jaya & Others. The relevant portion of the judgment is extracted below;

> "7. .... The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In

such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to re-writing the statute or the contract of insurance which is not permissible."

13. In view of Section 147 - 2(b) of the Motor Vehicles Act and the observations made by the Hon'ble Apex Court in the above said judgment with regard to the statutory liability, the present appeal is allowed and the award of the tribunal is modified to the extent of limiting the liability of the appellant/ Insurance Company to Rs. 6,000/- out of the total compensation of Rs.50,000/- awarded by the tribunal. Since the sum arrived at by the tribunal is based on the documents, this Court permits the 1st respondent/petitioner to claim the remaining amount from the owner of the alleged vehicle.

14. The appellant/Insurance Company is directed to deposit the modified award amount before the tribunal, with interest and costs, within a period of four weeks from the date of receipt of a copy of this order. If the appellant has already deposited the entire amount awarded by the tribunal, the appellant is permitted to withdraw the remaining amount. On such deposi, Tribunal is directed to transfer the amount to the claimant's bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry the same as ordered by the tribunal.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

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Sub Assistant Registrar

To

1) II Additional Sub Judge,
Motor Accidents Claims Tribunal, Erode.

2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.N.Manoharan , Advocate, S.R.No.7292
+1 cc to Mr.S.Arunkumar, Advocate, S.R.No.7786

C.M.A.No. 2952 of 2005
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CNR(CO)
SSM(24/04/2019).