IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.862 of 2009

United India Insurance Co.Ltd.,
Divisional Manager
No.50, Katpadi Road, Vellore. ... Appellant/2nd Respondent

Vs

1.Kulasekaran ..Respondent/Petitioner

2.Malliga ...Respondents/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.06.2008 made in M.C.O.P No.254 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub Court), Vellore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.V.Vasanthakumar for R1

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.48,000/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 18.10.2002 at about 2.00 a.m., the first respondent was travelling in the Ambassador Car bearing Reg.No.TDT-7933 belonging to the second respondent and insured with the appellant Insurance Company, from Ranipet to Walajapet. The car was driven by its driver in a rash and negligent manner. When the car reached near V.C.Mottur, the driver turned the car towards right side to go to the petrol bunk for filling diesel. At that time, the right side rear tyre of the car got burst and due to the same, driver of the car lost his control and the car dashed against a lorry which was passing through the left side of the car. Due to the said impact, the first respondent sustained grievous injuries and his left hand got fractured. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.96,000/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal has fixed the negligence on the part of the drivers of both the vehicles equally and accordingly directed the appellant Insurance Company to pay 50% of the compensation, ie. Rs.48,000/- as compensation to the claimant.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in directing the appellant Insurance Company to pay a sum of Rs.48,000/- in spite of the fact that the Ambassador Car is a 'Private Car' and the policy did not cover liability to gratuitous passengers. He submitted that the Tribunal ought to have directed the owner of the vehicle, who remained ex-parte before the Tribunal, to pay the compensation to the claimant. He relied upon the judgment of this Court in the case of New India Assurance Co.Ltd. v. S.Krishnasamy, reported in 2015(1) TN MAC 19 (DB), to state that when the policy covers only 'Third Party' risk and risk of occupants of car not covered, the insurer cannot be held to be liable to pay compensation.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and also correctly fixed the negligence on the part of drivers of both the vehicles and accordingly directed the appellant Insurance Company to pay 50% of the award and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

7.The only question that has to be decided in this appeal is whether the appellant Insurance Company is liable to pay compensation to the first respondent / claimant or not?

8.Considering the materials and evidence available on record, the Tribunal has observed that the appellant has not proved that the car in question has been used for rent. Thereafter, giving a finding that the accident had occurred due to the negligence on the part of the drivers of both the car and lorry, the Tribunal fixed the negligence on the part of the appellant Insurance Company (insurer of the car) at 50%. Ex.R1 is the copy of the insurance policy of the car in question. It is seen from the policy that the car in question is a 'Private Car' and it did not cover liability to gratuitous passengers. It is clear that the first respondent travelled in the car in question. Leaving aside the question as to whether the car has been used for rent or not, the fact remains that the policy in question is a statutory policy and it did not cover the risk of death of or bodily injury to gratuitous passengers. It is also seen that the owner of the vehicle remained exparte before the Tribunal in spite of serving summons. In the circumstances, it is not correct on the part of the Tribunal to direct the appellant Insurance Company to pay the compensation, as the policy did not cover the risk of death of or bodily injury to gratuitous passengers.

9.In view of the foregoings, the Civil Miscellaneous Appeal is allowed and the appellant Insurance Company is exonerated from making payment of compensation as ordered by the Tribunal. If any amount had already been deposited by the appellant Insurance Company, the same is permitted to be withdrawn by the Insurance Company. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(Sub Court), Vellore.

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

+1 CC to Mr.D.Bhaskaran, advocate sr 73076.

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VGII(CO)
SP(06/02/2020)