IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1670 of 2013
and
M.P.No.1 of 2013

United India Insurance Co. Ltd.,
Post Box No.1122,
D.B.Road, R.S.Puram,
Coimbatore – 641 002. .. Appellant

Versus

1.Tamilnadu State Transport Corporation,
(Coimbatore) Ltd.,
Rep.by its General Manager,
Chennimalai Road,
Erode.

2.N.Vadukanathasami
3.R.Shanmugasundaram .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 12.04.2011 made in M.C.O.P.No.173 of 2008 on the file of The Motor Accidents Claims Tribunal, II Additional Subordinate Court, Erode, Erode District.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For Respondents : Mr.K.J.Sivakumar, for R1
No Appearance for R2

JUDGMENT

The civil miscellaneous appeal has been filed by the Insurance Company challenging the award dated 12.04.2011 passed by the Motor Accidents Claims Tribunal, II[nd] Additional Subordinate Court, Erode, Erode District in M.C.O.P.No.173 of 2008.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) On 17.12.2006 at about 8.30 pm, one Thiru.C.Velmurugan (driver) drove the bus bearing Registration No.TN33 N 1259 from Vellakoil to Kangayam main road near Kollengikattuvalasu on the left side of the road. At that time, the second respondent herein drove the lorry bearing Registration No.TN32 X 9090 in a rash and negligent manner and dashed against the bus. As a result, the first respondent's bus was damaged and they incurred a loss of Rs.42,237.70/-.

(ii) The first respondent/claimant filed a claim petition under Section 166 (2) of The Motor Vehicles Act, 1994, (for short the "Act") claiming Rs.42,237.70/- as compensation for the damages caused to the bus bearing Registration No. TN33 N 1259. Having considered the materials on record, the Tribunal awarded a sum of Rs.40,000/- as compensation to the first respondent / claimant.

(iii) Aggrieved by the award dated 12.04.2011 passed in M.C.O.P.No.173 of 2008, this civil miscellaneous appeal has been filed by the Insurance Company.

3. Heard Mr. E. Rajadurai, learned counsel for the appellant and Mr. K.J. Sivakumar, learned counsel for R1.

4. The learned counsel for the appellant / Insurance Company submitted that the Tribunal awarded a huge sum of Rs.40,000/- for the damages caused to the vehicle of the claimant, without considering

the conditions of the policy. According to him, the policy conditions clearly stipulates that it is a policy with limited liability which clearly denotes that it is an Act Policy. As per the conditions of the policy, the liability of the Insurance Company is restricted to and limited only to the minimum of Rs.6,000/-. Therefore, according to the counsel for the appellant, the appellant/Insurance Company is liable to pay only a sum of Rs.6,000/- under the Act policy, however, the Tribunal awarded an exorbitant sum of Rs.40,000/- as compensation. Hence, it is liable to be interfered with. If any amount is determined as compensation over and above Rs.6,000/-, such amount has to be paid only by the owner of the vehicle and it cannot be mulcted on the appellant / Insurance Company. The Court below has erroneously awarded Rs.40,000, which is without any basis. The assessment made by the Tribunal for awarding compensation was only on its own discretion rather than oral and documentary evidence available on record. Therefore, the learned counsel for the appellant prayed for setting aside the award of the Tribunal.

5. I have gone through the materials available on record. The Court below awarded a sum of Rs.40,000/- and directed the appellant / Insurance Company to pay the said amount to the claimant, jointly and severally. Before the Tribunal, the Insurance Company has filed a counter affidavit contending that the policy in question is an Act Policy, as per which, the liability of the Insurance Company is limited and restricted only to Rs.6,000/-. The counter filed by the Insurance Company before the Tribunal shows that the Insurance Company admitted the accident and also the fact that the Insurance Policy was in force on the date of accident. As per the policy, it is seen that the claim amount will be restricted only to Rs.6,000/-. Hence, this Court is of the view that the appellant is liable to pay only Rs.6,000/- out of the total compensation of Rs.40,000/- awarded by the Tribunal. It is open to the first respondent to proceed against the second and third respondents for recovering the balance amount of Rs.34,000/- awarded by the Tribunal.

6. Accordingly, this Civil Miscellaneous Appeal is allowed and the appellant / Insurance Company is directed to deposit a sum of Rs.6,000/-

with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same by filing a formal petition before the concerned Court. No costs. Consequently, the connected miscellaneous petition is closed.

09.12.2019

Index: Yes/No
AT

To
1.The General Manager,
Tamilnadu State Transport Corporation,
(Coimbatore) Ltd.,
Chennimalai Road,
Erode.

V.BHAVANI SUBBAROYAN,J.

AT

C.M.A.No.1670 of 2013
and
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19.12.2019