IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2005, 2006 and 2007 of 2015

The United India insurance Company Limited
Rep.by its Branch Manager
1st Floor, 3, Giriram Building
Sathy Main Road
Gobi Town
Gobichettypalayam Taluk
Erode District.

... Appellant in all C.M.As./3rd Respondent

Vs.

1.Premkumar ... 1st Respondent in CMA.No.2005/2015/Petitioner

2.Velusamy ... 1st Respondent in CMA.No.2006/2015/Petitioner

3.Muthusamy ... 1st Respondent in CMA.No.2007/2015/Petitioner

4.K.P.Murugesan

5.S.Vasanthakumar

... Respondents 2 and 3 in all C.M.As./ 1st and 2nd in MCOPs

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.03.2015 made in M.C.O.P.Nos.279, 280 & 281 of 2014 respectively on the file of the Motor Accident Claims Tribunal, Gobichettypalayam, Subordinate Judge, Gobichettypalayam.

For appellant : Mr.C.Paranthaman (in all C.M.As.)
For Respondents: Mr.Ma.P.Thangavel for R1 (in all C.M.As.)
2nd & 3rd Respondents: NA

COMMON JUDGMENT

All the Civil Miscellaneous Appeals are filed by the appellant/Insurance Company against the award dated 24.03.2015

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made in M.C.O.P.Nos.279, 280 & 281 of 2014 respectively on the file of the Motor Accident Claims Tribunal, Gobichettypalayam, Subordinate Judge, Gobichettypalayam.

2.The 1st respondent in all the Civil Miscellaneous Appeals are claimants before the Tribunal, claiming a sum of Rs.3,10,000/-, Rs.5,00,000/- and Rs.3,00,000/- respectively for the injuries sustained by them in the accident that took place on 23.06.2014.

3.All the appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment. The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

4.According to the claimants, on 23.06.2014 at about 7.15 am, the claimant in MCOP No.280 of 2014 was proceeding in the Omni van along with his son Premkumar, claimant in MCOP No.279 of 2014 and his brother Muthusamy, claimant in MCOP No.281 of 2014. The driver of the Omni van, 1st respondent (in all the MCOP Nos.), drove the same in a rash and negligent manner, dashed against the tree on the right side of the road and caused the accident. In the said accident, the claimants suffered grievous injuries and took treatment in the hospital.

5.The claimants were masons and were earning a sum of Rs.18,000/- per month. Due to the injuries, they were not able to do the work as they were doing before the accident and hence, filed claim petition claiming compensation.

6.The respondents 1 and 2 remained exparte before the Tribunal. The 3rd respondent/Insurance Company filed counter statement and contended that the accident did not occur due to rash and negligent driving by the driver of the Omni van, but due to rash and negligent driving by the driver of vehicle coming, in the opposite direction. In order to avoid accident, the 1st respondent turned the vehicle and hit the tree. Further, the policy taken by the 2nd respondent is an act policy and occupants of the Omni van are not covered and the 3rd respondent is not liable to pay any compensation. Moreover, compensation claimed by the claimants are exaggerated.

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7.Before the Tribunal, the claimants were examined as P.W's.1 to 3 and examined Doctor as P.W.4; marked 32 documents as Exs.P.1 to 32. On the side of the 3rd respondent/Insurance Company, R.W.1 was examined and marked 1 document as Ex.R.1.

8.The Tribunal, considering the pleadings, oral and documentary evidences held that the accident occurred only due to rash and negligent driving of the 1st respondent, driver of the omni van belonging to the 2nd respondent. Further, the

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Tribunal, considering Ex.R1-Insurance policy held that the 2nd respondent violated the policy condition and hence, he is liable to pay compensation and also directed the 3rd respondent to pay the compensation at the first instance and recover the same from the 2nd respondent.

9.Against the said common award, the Insurance Company/3rd respondent has come out with these Civil Miscellaneous Appeals challenging the liability fixed on them and quantum of compensation awarded by the Tribunal.

10.The learned counsel for the 3rd respondent/Insurance Company contended that the Tribunal erred in holding that the accident occurred only due to the rash and negligent driving by the 1st respondent, the driver of the Omni van belonging to the 2nd respondent. The Tribunal failed to see that the 2nd respondent took only an act policy which does not cover the liability of the passengers traveling in the Omni van. Further, the Tribunal having held that the 2nd respondent/owner of the vehicle violated the policy condition, erred in ordering pay and recovery. Injuries sustained by the claimants are only simple injuries and amounts awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the claimants contended that the claimants examined themselves as P.W's.1 to 3 and deposed the manner in which the accident occurred and only the 1st respondent is responsible for the said accident. The 3rd respondent has not let in any evidence to disprove the evidence of the claimants. The Tribunal, by appreciating the pleadings and evidence properly held that the accident occurred only due to rash and negligent driving of the 1st respondent. As per the provisions of the Motor Vehicles Act, 1988, under Section 147, the act policy covers all the persons traveling in the Omni van. Even if the policy is an Act Policy and not a Comprehensive Policy, the Insurance Company is liable to pay compensation and the Tribunal has rightly directed the 3rd respondent to pay compensation at the first instance and recover the same from the 2nd respondent. As per Section 147(1)(b)(i) of the Motor Vehicle Act, the words, any person mentioned therein includes persons carried in a vehicle and are not confined to third party only. Even if the 2nd respondent has not taken any comprehensive policy, the passengers traveling in the Omni van are entitled for compensation from the 3rd respondent and it has to be recovered from the 2nd respondent. The Tribunal has given valid reason for ordering pay and recovery and prayed for dismissal of the appeals.

12.Heard the learned counsel appearing for the 3rd respondent/Insurance Company as well as the claimants and perused the materials available on record.

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13.From the materials on record, it is seen that the claimants, travelled in the Omni van belonging to the 2nd respondent. The 1st respondent, driver has taken them for their work and the claimants contended that the 1st respondent drove the vehicle in a rash and negligent manner and caused accident, due to which, they sustained injuries. According to the claimants, accident occurred only due to rash and negligent driving by the 1st respondent and the respondents 2 & 3 are owner of the vehicle and Insurance Company respectively are liable to pay compensation. On the other hand, the 3rd respondent contended that due to the rash and negligent driving by the 1st respondent, accident did not occur, but it has happened only due to rash and negligent driving by the driver of the vehicle which came in the opposite direction.

14.It is seen from the award of the Tribunal that the claimants have examined themselves as P.W's.1 to 3 and they have narrated the manner in which the accident occurred. No contra evidence was let in by the 3rd respondent and therefore, findings of the Tribunal that the accident occurred due to rash and negligent driving by the 1st respondent is correct and there is no reason to interfere with the award of the Tribunal.

15.As far as the liability of 3rd respondent is concerned, it is admitted that policy taken by the 2nd respondent issued by the 3rd respondent is only an Act policy and it is not a Comprehensive Policy. As per Section 147 of Motor Vehicles Act, the owner of the vehicle has to take a policy to cover third party and as per the amendment of Section 147 of the Motor Vehicles Act owner of the goods or his authorized representatives traveling in a goods vehicle accompanying their goods are also covered as per the policy issued under Section 147 of the Motor Vehicles Act, without any extra premium being paid. It has been considered by the Hon'ble Apex Court that the Act policy covers the passengers traveling in a car or as a pillion rider in a two wheeler, only when the owner pays extra premium and takes Comprehensive Policy covering the passengers traveling in the car or as a pillion rider in the motor cycle. The Insurance Company/3rd respondent is not liable to pay compensation for the death or injury of such persons. The Tribunal having held that the policy issued by the 3rd respondent is only an Act policy, erred in ordering pay and recovery on the ground that there is violation of policy condition and the said reasoning is erroneous. When the Insurance Company is not liable to pay compensation as per the policy condition, then the question of pay and recovery does not arise. In view of the well settled judgment, the award of the Tribunal directing the 3rd respondent to pay the compensation at the first instance and recover the same from 2nd respondent alone is set aside.

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16.In the result, these Civil Miscellaneous Appeals are partly allowed. The learned counsel for the 3rd respondent/Insurance Company submitted that they have already deposited the entire award amount to the credit of M.C.O.P.Nos.279, 280 & 281 of 2014. Therefore, the 3rd respondent/Insurance Company is permitted to withdraw the same by filing proper application before the Tribunal. The 2nd respondent/owner of the vehicle is directed to deposit the award amount along with interest and costs, 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 claimants are permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by filing proper application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Gobichettypalayam.

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

+2cc to Mr.C.Paranthaman, Advocate sr.4479 & 4480
+1cc to Mr.Ma.P.Thangavel, Advocate sr.5097

C.M.A.Nos.2005, 2006
and 2007 of 2015

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