IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2019

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2370 of 2013

M/s.Royal Sundaram Alliance
Insurance Company Limited
Whites Road, Chennai. ….Appellant/2nd Respondent

Versus

1.Rajendhiran ..1st Respondent/Petitioner

2.K.Sundara vadivel

3.Archean Ganites (P) Ltd.
Ist cross, II stage, Gowtham nagar,
Robertsonpet, K.G.P.,
Kolar District. ..Respondents/Respondents 1,3 & 4

4.United India Insurance Co. Ltd.
Rep. by its Branch Manager,
K.G.F., Kolar District.

(R2 set exparte in lower court)

....Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 18.12.2012 , made in MACT O.P.No.12 of 2008 on the file of the Motor Accident claims tribunal (Additional District Judge) at Krishnagiri.

For Appellant	:	M/S.R. Sreevidya
For R1	:	Mr.Mukund R.Pandian
For R2	:	Exparte in lower court
For R3	:	Not ready for notice
For R4	:	Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 18.12.2012 , made in MACT O.P.No.12 of 2008 on the file of the Motor Accident claims tribunal (Additional District Judge) at Krishnagiri.

2. The brief facts leading to the claim petition are as follows :-

On 26.04.2007 night after loading the mangoes of his owner Nagappan at Krishnagiri in the container lorry bearing Registration No.TN-05-U-7459, belonging to the 1st respondent and insured with 2nd respondent and proceeded towards Chennai. The driver of the container lorry drove the same in a rash, careless and negligent manner. Further, he has not followed the traffic rules of the road. At about 03.00 hrs on 27.04.2007, when the said container lorry was proceeding Vellore-Chennai MBT Main road, the driver of the lorry drove that lorry at an uncontrollable speed and dashed against the stationed lorry bearing Registration No.KA-08-B-6024, belonging to the 3rd respondent and insured with 4th respondent which was parked dangerously without any parking lights or any caution. Due to the impact the petitioner sustained injuries, underwent pain and sufferings and mental agony. He claimed at Rs.3,00,000/- as compensation.

3. The Insurance company in their statement have denied the accident and stated that the lorry bearing registration no. TN05-U-7450 in which the petitioner had travelled is a goods vehicle, hence he travelled in the said vehicle as an unauthorised passenger, which is violation of policy conditions. Hence, they are not liable to pay any compensation.

4. The tribunal after investigation the documents and evidence placed before the same, has given finding that the accident occurred only due to the negligence on the part of the first respondent driver and not on the 3rd respondent driver and fixed the liability on both 1st & 2nd respondents and directed to pay the compensation of Rs.82,500/- jointly and severally to the claimant.

5. Aggrieved against the said liability the second respondent/Insurance company has preferred this appeal (Royal Sundaram Alliance).

6. The appellant /Insurance company in the appeal has stated that the person traveled in the said lorry as gratuitous passenger and the policy Exhibit P1 does not cover any liability. Further it is stated that the said person has not travelled in any capacity as contemplated under section 147 of the M.V.Act. Hence, the appellant/Insurance Company has preferred this appeal to set aside the liability fixed by the tribunal.

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

8. The argument of the appellant is that the petitioner/ claimant has travelled as a coolee and as per his own argument, there is no sitting capacity in the said vehicle for coolee and therefore it is clear that the said vehicle which involved in the accident is meant for transporting the goods alone. Hence, for the act of violation of policy condition by the claimant, the appellant/Insurance Company is not liable to pay any compensation.

9. Though the appellant has argued that they are not liable to pay compensation, this Court is of the view that the said lorry which caused the accident due to the negligence by the driver is insured with this appellant and therefore the respondent/claimant is no way responsible for the negligence act on the part of the driver. Since, the claimant is being the victim of the said act of the driver, this appellant/insurance company under whom the vehicle is insured is every responsible to pay the compensation to the injured and he can very well recover the same from the owner of the vehicle without filing a sub Court proceedings.

10. In this context, it would be appropriate to refer the judgment reported 2018 (2) TN MAC 273 (SC) wherein it has been stated that "High Court ought to have directed Insurer to pay and recover in consonance with view taken in Swaran Singh, Mangla Ram, Rani and Manuara Khatun". The relevant portion of the Judgment reads as follows :-

> At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the Compensation amount to the Claimants (Appellants) with liberty to recover the same from the Tractor Owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd., Vs Swaran Singh & Others 2004 (3) SCC 297; Mangla Ram Vs Oriental Insurance Co. Ltd., 2018 (1) TN MAC 681 (SC) : 2018 (5) SCC 656; Rani & Others Vs National Insurance Co. Ltd., & Others., 2018 (9) SCALE 310; and including Manuara Khatun and Others Vs Rajesh Kumar Singh and Others, 2017 (4) SCC 796. In other words, the High Court should have partly allowed the Appeal preferred by the respondent No.2. The Appellants may, therefore, succeed in getting relief of direction to respondent No.2-Insurance Company to pay the Compensation Amount to the Appellants with liberty to recover the same from the Tractor Owner (Respondent No.1)

11. In view of the above, this Civil Miscellaneous Appeal is partly allowed directing the appellant/Insurance Company to pay the compensation to the claimant with liberty to recover the same from the owner of the vehicle/2nd respondent herein. No costs. Consequently, connected Miscellaneous Petitions are closed, if any.

12. The appellant /Insurance Company is directed to deposit the entire amount awarded by the tribunal along with interest less the amount already deposited within a period of four weeks from the date of receipt of copy of this order. On such deposit is being made, the Tribunal is directed to transfer the respective shares to the claimants to their bank accounts through RTGS within one week thereon as apportionment by the Tribunal. The appellant/ Insurance Company is permitted to recover the award amount from the 2nd respondent/owner of the vehicle.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsn
To
1. The Additional District Judge, the Motor Accident Claims Tribunal
Krishnagiri.

2.The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.R. Sreevidya, Advocate sr 8292.
+1 CC to Mr.T.Ravichandran, Advocate sr 7147
+1 CC to Mr.Mukund R.Pandian, Advocate sr 7216.

CMA.No.2370 of 2013

PVS(CO)
SP(04/06/2020)