IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NOS.877 AND 878 OF 2015
AND
M.P.NOS.1 AND 1 OF 2015

Divisional Manager,
National Insurance Company Ltd.,
DO.110, Nehru Street,
Puduchery - 605 001.

...Appellant in both the appeals

Vs

Kasthuri ... 1st respondent in CMA 877/2015

R.Bhavani ... 1st respondent in CMA 878/2015

S.Joseph ... 2nd respondent in both the appeals

C.M.A.No.877 of 2015 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.08.2014 made in MCOP No.633 of 2011 on the file of the Motor Accidents Claims Tribunal, 1st Additional Subordinate Judge, Cuddalore.

C.M.A.No.878 of 2015 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.08.2014 made in MCOP No.634 of 2011 on the file of the Motor Accidents Claims Tribunal, 1st Additional Subordinate Judge, Cuddalore.

For Appellant in both appeals : Mr.G.Udaya Sankar

For Respondents in both appeals : No appearance

COMMON JUDGMENT

These appeals have been preferred by the Insurance Company against the awards of a sum of Rs.1,34,500/- and Rs.25,000/- respectively, towards compensation to the first respondent(s)/ claimants in these appeals, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 25.01.2011, at about 18.00 hours, the first respondent(s)/ claimants were travelling in an Ambassador Car bearing Registration No.TN-49-Y-3900 belonging to the second respondent and insured with the appellant insurance company, from Chidambaram to their home at Krishnankuppam. When the vehicle was plying in Cuddalore Bye-pass Road, near Azhinjimedu village, due to rash and negligent driving of its driver, it dashed against the TATA ACE vehicle bearing Registration No.TN 31 AW 7222 which was coming from the opposite direction. Due to the said impact, both the first respondent in these appeals sustained grievous injuries in all over the body. They filed separate claim petitions before the Tribunal claiming compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,34,500/- with interest at the rate of 7.5% per annum from the date of petition, in respect of the first respondent/ injured in CMA No.877 of 2015 and Rs.25,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of the first respondent/injured in CMA No.878 of 2015.

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

4.The learned counsel for the appellant insurance company has submitted that the policy in question covers the third party to the vehicle, who may eventually sustain injury or death and it does not cover the driver or a gratuitous passenger, who travel in the vehicle covered by the insurance policy. Thus, according to the learned counsel, the policy is an ACT policy meant to cover the risk that may be confronted by a third party to the vehicle and not to the occupants of the vehicle. In this case, the claimants admittedly travelled in the car and they cannot be covered by the policy in question and hence, the insurance company is not liable to pay compensation to the claimants. Above all, the learned counsel also submitted that the compensation awarded by the Tribunal to the first respondent in CMA.No.877 of 2015 is excessive and exorbitant.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.Despite the service of notice and the name of the respondents having been printed in the cause list, there is no representation on their behalf.

7.There is no grievance as regards the factum of accident and the manner in which the accident occurred. What was disputed herein is the liability of the insurance company to pay compensation to the claimants.

8.According to the appellant insurance company, the policy in question is only an ACT policy which is meant to cover third party vehicle users and not the occupant of the vehicle which is covered by the insurance policy. Further, the claimants had travelled in the Car which is covered by the insurance policy and they are not third party to the vehicle. In such cases, the owner of the vehicle alone is liable to pay compensation and the insurance company cannot be mulcted with any liability.

9.This Court finds some force in the submission of the learned counsel for the appellant. It is evident that there is a violation of the policy condition inasmuch as the claimants travelled in the car which is covered by the policy and they are not third party to the vehicle. In such circumstances, it is only the owner of the vehicle who has to compensate the injured. At the same time, it is well settled proposition that even if there is violation of the policy condition, still, the Insurance Company can be directed to pay the compensation amount at the first instance and then recover it from the owner of the vehicle. Applying the above proposition of law, this Court feels it just and proper to direct the appellant insurance company to pay compensation to the claimants initially and thereafter, recover the same from the owner of the vehicle. Accordingly, the finding of the Tribunal on the issue of liability is modified.

10.With regard to the quantum of compensation relating to the first respondent in CMA No.877 of 2015, the Tribunal, after evaluating the oral and documentary evidence adduced by the injured, has awarded the total compensation of Rs.1,34,500/- i.e., Rs.60,000/- for permanent disability, Rs.10,000/- for Transportation, Rs.10,000/- for Extra Nourishment, Rs.2000/- for damage to clothes and articles, Rs.2,500/- for Attender's charge, Rs.25,000/- for Pain and suffering and Rs.25,000/- for loss of amenities, which, in the view of this Court, are fair, just and reasonable and the same cannot be treated as excessive or exorbitant, at any stretch of imagination and hence, the same are hereby confirmed.

11.There is no dispute with regard to the quantum of compensation awarded to the first respondent in CMA No.878 of 2015 and hence, the same is confirmed as such.

12.In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the entire award amounts with interest and costs, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle in accordance with law. On such deposit being made, the Tribunal shall transfer the same to the respective bank accounts of the first respondent(s)/claimants through RTGS, within a period of one week thereafter.

Sd/-
Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge,
   Motor Accidents Claims Tribunal
   Cuddalore.

Copy To
The Section Officer,
VR Section, Madras High Court.

+2cc to Mr.G.Udaya Sankar, Advocate, S.R.No.90973 & 90974

C.M.A.Nos.877 and 878 of 2015
and M.P.Nos.1 and 1 of 2015

MG(CO)
CS/27/07/2020