IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2257 & 2258 of 2016 and 3024 of 2018
and C.M.P.No.15930, 15931 & 22926 of 2018

TATA AIG General Insurance Co. Ltd.,
1057, Avinashi Road,
Coimbatore 641 018. .. Appellant /4th Respondent in all C.M.As

Vs.

1.Amsavalli ..1st Respondent/Petitioner
2.Vignesh @ Vignesh Kumar
3.Aruchamy
4.Varatharajan .. Respondents 2 to 4 /Respondents 1 & 3 in C.M.A.No.2257/2016

1.Manoharan (died) ..1st Respondent/Petitioner in C.M.A.No.2258/2016.
2.Vignesh @ Vignesh Kumar
3.Aruchamy
4.Varatharajan ..Respondents 1 2 & 4/Respondents 1 & 3
5.Kavitha
6.Araliswaran
7.Devadarshini ..Respondents 5 to 7
(R5 to R7 brought on record as LR's of the deceased 1st respondent vide order dated 09.01.2019 made in C.M.P.Nos.673, 679 & 669/2019 in C.M.A.No.2258/2016)

1.R.Boominathan ..1st Respondent/Petitioner in C.M.A.No.3024/2018.
2.Vignesh @ Vignesh Kumar
3.Aruchamy
4.Varatharajan .. Respondents 2 & 4/Respondents 1 & 3 in C.M.A.No.3024/2018

(R2 to R4 in all the appeals were set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.02.2015 made in M.C.O.P.Nos.2417 & 2418 of 2012 and 1094 of 2013 on the file of the Special Subordinate Judge, (Motor

Accidents Claims Tribunal), Coimbatore.

For Appellant : Mr.N.Vijayaraghavan
(in all C.M.As.)

For R1 : Mr.M.Purushothaman
(in all C.M.As.)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 16.02.2015 made in M.C.O.P.Nos.2417 & 2418 of 2012 and 1094 of 2013 on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Coimbatore.

2.All the appeals are arising out of same accident and two separate awards. Hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The appellant-Insurance Company is the 4th respondent in M.C.O.P.Nos.2417 & 2418 of 2012 and 1094 of 2013 on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Coimbatore. The claimants filed the said claim petitions claiming a sum of Rs.5,00,000/-, Rs.5,00,000/- and Rs.10,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 28.10.2012. In C.M.A.No.2258/2016, the 1st respondent died. His legal heirs were impleaded as respondents 5 to 7. The 1st respondent is the owner-cum-driver of the Alto car and 2nd respondent is the driver of the Auto involved in the accident.

4.The claimants contended that the accident occurred due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto car and claimed compensation against all the respondents, jointly and severally.

5.The respondents 1 to 3 remained exparte before the Tribunal.

6.The 4th respondent-Insurance Company in the counter statement contended that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto car and 4th respondent-Insurance Company is not liable to pay any compensation.

7.Before the Tribunal, the claimant in M.C.O.P.Nos.2417 & 2418 of 2012 examined themselves as P.W.1 and P.W.2 and examined one Dr.K.Kajendran as P.W.3 and claimant in M.C.O.P.No.1094 of 2013 examined himself as P.W.1 and one Dr.K.Kajendran was examined as P.W.2. The 4th respondent examined the Motor

Vehicle's Inspector as R.W.1 in all the claim petitions.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto car and having held so, the Tribunal referred to Section 147(1)(b)(ii) of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act'), holding that the 4th respondent-Insurance Company as the insurer of the Auto, a public vehicle is liable to pay compensation along with 1st respondent, owner-cum-driver of the Alto car and directed the 1st respondent as well as the 4th respondent-Insurance Company to pay a sum of Rs.1,20,000/-, Rs.1,59,000/- and Rs.4,18,000/- jointly and severally as compensation to the claimant in all the claim petitions respectively.

9.Against the said award dated 16.02.2015 made in M.C.O.P.Nos.2417 & 2418 of 2012 and 1094 of 2013, fastening the liability on the 4th respondent/appellant-Insurance Company to pay the compensation awarded, the 4th respondent has come out with these appeals.

10.The learned counsel appearing for the 4th respondent-Insurance Company contended that the Tribunal erred in fastening liability on the 4th respondent, who is the insurer of the Auto, after having held that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto Car. FIR and Charge Sheet are filed only against the 1st respondent. The Tribunal interpreted Section 147 of the Act and erroneously held that the 4th respondent-Insurance Company is liable to pay compensation. The Tribunal failed to see that as per Section 166 of the Act, negligence has to be proved. In the absence of any liability on the owner of the Auto, the insurer/4th respondent cannot be fastened any liability. The compensation awarded by the Tribunal is unsustainable and prayed for setting aside the award insofar as the 4th respondent is concerned.

11.Per contra, the learned counsel appearing for the claimants contended that the Tribunal has properly considered Section 147 (1)(b)(ii) of the Act, wherein it has been held that the Insurance Company is liable to pay compensation for the death or bodily injury for use of public vehicle. The Tribunal has followed the judgment of the Hon'ble Apex Court and directed the 4th respondent-Insurance Company to pay the compensation by giving cogent and valid reason and prayed for dismissal of all the appeals.

12.Heard the learned counsel appearing for the 4th respondent/appellant-Insurance Company as well as the claimants and perused the materials available on record.

13.From the materials on record, it is seen that the claimants in the FIR and in the claim petitions have stated that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto car. The Tribunal considering the contentions in the claim petitions, held that the 1st respondent, owner-cum-driver of the Alto car alone is responsible for the accident and driver of the Auto is not responsible for the accident. Having held so, the Tribunal held that in view of Section 147(1)(b)(ii) of the Act, the 4th respondent-Insurance Company is liable to pay compensation along with 1st respondent, owner-cum-driver of the Alto Car, in view of use of Auto, the public vehicle, insured with the 4th respondent-Insurance Company. The said finding is erroneous. As per Section 147 of the Act, the Insurance Policy is with regard to third party claim and also for the claim by the owner of the goods or its authorised agents who travelled in the commercial vehicle along with goods. As per Section 166 of the Act, the claimant has to prove the negligence. Only when the accident has occurred due to negligence on the part of the driver of the vehicle insured with the Insurance Company, the Insurance Company will be liable to pay the compensation. The principle of the Insurance Policy is that the Insurance Company has to indemnify the insured, in respect of claim made against the insured. Unless the negligence on the part of the driver of the vehicle insured with the Insurance Company is proved, the Insurance Company is not liable to pay any compensation. In the present case, the claimants have lodged compliant and stated in the claim petitions that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Alto car. The Tribunal also held that the accident occurred only due to rash and negligent driving by the 1st respondent. In view of such finding, the award of the Tribunal holding that the 4th respondent is also liable to pay compensation is erroneous, when there is no negligence on the part of the driver of the Auto which was insured with the 4th respondent-Insurance Company. For the above reasons, the award of the Tribunal with regard to fastening liability fixed on the 4th respondent-Insurance Company alone is liable to be set aside and is hereby set aside.

14.In the result, all the appeals are allowed and sum of Rs.1,20,000/-, Rs.1,59,000/- and Rs.4,18,000/- awarded by the Tribunal as compensation to the claimants respectively, along with interest and costs are confirmed. The 1st respondent in all the claim petitions/2nd respondent herein 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 to the credit of M.C.O.P.Nos.2417 & 2418 of 2012 and 1094 of 2013 respectively. On such deposit, the claimants are permitted to withdraw the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

True Copy

Sub-Assistant Registrar

gsa
To
1.The Special Subordinate Judge,
(Motor Accidents Claims Tribunal), Coimbatore.

2.The Section officer
V.R.Section,
High Court,
Chennai.

+3 CCS to Mr.M.Purushothaman, Advocate sr 2434 & 2436.
+3 Ccs to Mr.N.Vijayaraghavan, Advocate sr 2495 to 2497.

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GJII(CO)
SP(11/04/2019)