IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2663 to 2665 of 2012
and M.P.Nos.1, 1 & 1 of 2010

(Through Video Conferencing)

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Teen Plaza Complex, 1st Floor,
State Bank Road,
Myladuthurai Taluk and Town,
Nagapattinam District. .. Appellant in all C.M.As.

Vs.

Jeyam ... 1st Respondent in C.M.A.No.2663/2012

Indirajith ... 1st Respondent in C.M.A.No.2664/2012

Elangovan ... 1st Respondent in C.M.A.No.2665/2012

Murugaiyan ... 2nd Respondent in all C.M.As.

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Common Judgment and Decrees dated 22.03.2012 made in M.C.O.P.Nos.184, 185 and 191 of 2010, on the file of the Motor Accident Claims Tribunal (Additional Sub Court) Myladuthurai.

For Appellant : Ms.Harini for Mr.N.Vijayaraghavan in all C.M.As.

For R1 : Mr.T.Gopinath for M/s.Royan Law Associates in all C.M.As.

COMMON JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

2. The issue is squarely covered in favour of the appellant-Insurance Company in view of the following decisions of the Hon'ble Supreme Court.

i. New India Assurance Co. Ltd. Vs. Asha Rani, (2003) 2 SCC 223.
ii. United India Insurance Co. Ltd. Vs. Tilak Singh, (2006) 4 SCC 404.
iii. United India Insurance Co. Ltd. Vs. M.Lakxmi, (2009) 17 SCC 301 .

3. In the light of the above decisions, this Civil Miscellaneous Appeals are allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

29.07.2020

kkd/jen

This matter having been listed under the caption for clarification on 25/08/2020 pursuant to the order of this Court dated 29/07/2020 and made herein in the presence of the aforesaid counsels on the either side, the Court made the following order;

On 29.07.2020, these Civil Miscellaneous Appeals were allowed in the light of the submission of the learned counsel for the appellant and the 1st respondent and in the light of the following decisions of the Hon'ble Supreme Court:-

i. New India Assurance Co. Ltd. Vs. Asha Rani, (2003) 2 SCC 223.

ii. United India Insurance Co. Ltd. Vs. Tilak Singh, (2006) 4 SCC 404.

iii. United India Insurance Co. Ltd. Vs. M.Lakxmi, (2009) 17 SCC 301 .

2. However, while passing the above order in the open court, this Court had inadvertently failed to note that the notice on the 2nd respondent owner of the vehicle has not been served till date.

3. While finalising the order, it was noticed that the appellant has not served the notice to the 2nd respondent owner of the vehicle till date despite a lapse of 8 years from the date of filing of these Civil Miscellaneous Appeals.

4. Therefore, these appeals were listed under the caption for clarification today (i.e.25.08.2020). After verifying the positions, the order passed in these appeals on 29.07.2020 is recalled and is substituted by this common judgment.

5. These appeals have been filed by the appellant-insurance company against all the impugned common judgment and three separate impugned decrees dated 22.03.2012, passed by the Motor Accidents Claims Tribunal ((Additional Sub Court) Myladuthurai in M.C.O.P.Nos.184, 185 and 191 of 2010.

6. By the impugned common judgement and three separate decrees dated 22.03.2012, the Tribunal has allowed all the claim petitions filed by the 1st respondent/claimant in the respective appeals and has awarded a sum of Rs.93,000, Rs.10,000/- and Rs.12,000/- respectively as compensation to them.

7. On 17.05.2009 at 3.00 p.m., when the claimants along with their relatives were travelling in the insured Maruthi Van bearing Reg.No.TCW 7679 belonging to the 2nd respondent, met with an accident and sustained injuries. It was alleged that the driver of the van drove the van in a rash and negligent manner and lost control and dashed it against a Tamarind tree and caused the accident.

8. The learned counsel appearing for the appellant/Insurance Company submitted that the policy issued by the appellant for the insured vehicle was only an Act Policy. The appellant has let in evidence to prove that Ex.P1/copy of insurance policy is only an Act Policy .

9. The learned counsel appearing for the respective 1st respondents/claimants submitted that the policy issued by the appellant was in force at the time of accident. It was submitted that the respective 1st respondents were third party to the insurance policy and therefore, all the three Civil Miscellaneous Appeals are liable to be dismissed.

10. I have considered the arguments advanced on behalf of the appellant and the 1st respondent/claimant in the respective appeals.

11. In all these cases, the appellant Insurance Company has been made liable to pay the compensation jointly and severally along with the 2nd respondent owner of the lorry.

12. On perusal of the records, it is noticed that the insured vehicle was covered with only an Act Policy and not with a comprehensive policy. I am of the view that these Civil Miscellaneous Appeals are liable to be allowed. However, till date, the notice on the 2nd respondent owner of the vehicle has not been served despite a lapse of 8 years from the date of filing of these Civil Miscellaneous Appeals. Only the learned counsel for the 1st respondent in the respective appeals is present.

13. Therefore, the appellant Insurance Company has a good case on merits for allowing these Civil Miscellaneous Appeals in the light of well settled principle of law. However, I am unable to allow these appeals in its favour in view of non-service of notice on the 2nd respondent owner of the insured van against whom under normal circumstances, this Court would have passed an adverse order. For the same reasons, I am unable to give liberty to the appellant Insurance Company to pay and recover the amount from the 2nd respondent owner of the insured van.

14. Therefore, the appellant Insurance Company is directed to deposit the amount of compensation awarded by the Tribunal together with interest thereon and costs in the respective claim petitions, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. On such deposit, the respective 1st respondents/claimants are permitted to withdraw the respective amount of compensation determined by the Tribunal in the respective claim petitions together with interest, less any amount already withdrawn by then, by filing suitable application before the Tribunal.

16. These Civil Miscellaneous Appeals are accordingly dismissed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

kkd/jen 25/08/2020

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accident Claims Tribunal,
(Additional Sub Judge),
Myladuthurai.

Copy to

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

C.M.A.Nos.2663 to 2665 of 2012

and M.P.Nos.1 to 1 of 2012

mp[co]
srg 10/08/2021