IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.506 of 2012 and
M.P.No.1 of 2012

ICICI Lombard General Insurance
Company Ltd.,
rep. By its Branch Manager,
'Swarnamigai Plaza'
ST No.6/5, Block No.7,
Omalur Main Road,
Near Bus Stand, Salem ..Appellant/Respondent

Vs.

Kamalanathan .. Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal [Principal Subordinate Judge] Krishnagiri made in M.C.O.P.No.261 of 2009 dated 14.06.2011.

For Appellant : Mrs.R.Sreevidhya

For Respondents: Mr.V.Kumaravelan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 14.06.2011 made in M.C.O.P.No.261 of 2009 on the file of Motor Accident Claims Tribunal (Principal Subordinate Judge) Krishnagiri.

2. According to the respondent / claimant, on 11.01.2008, at 3.00 hrs, early morning, he was travelling to his village in his pickup van by loading two bags of rice and some wooden materials, and it was driven by one Thirupathi in a slow and cautious manner. When the said vehicle was nearing Thatakuttai bus stop in Tirupattur to Krishnagiri Road, the front wheel tyre got punctured and the driver was not able to control the vehicle inspite of applying the break and dashed against a road side neem tree and the respondent sustained severe and multiple injuries. Thereafter, he was taken to the Government Hospital and he continued his treatment in private hospital. Since the vehicle is insured with the appellant, the respondent has claimed a compensation of Rs.5,00,000/- from the appellant. Subsequently, a case was registered against

the driver of the van in Crime No.24 of 2008 under Sections 279 and 338 of IPC. At the time of accident, the respondent was aged 37 years and he was doing coconut business, thereby earning a sum of Rs.7,500/- per month. The respondent is the sole breadwinner of his family.

3. Per contra, the appellant filed a detailed counter before the Tribunal by stating that the respondent is not a 3rd party and he is the owner of the vehicle, therefore, he cannot claim compensation for the injuries sustained by him while travelling in the same vehicle. Further, inspite of the notice, the respondent failed to provide all the information about the accident, hence it is a violation of the policy condition under Motor Vehicle Act. Further, the compensation claimed under several heads are excessive, therefore, sought to dismiss the claim petition.

4. The Tribunal after considering the pleadings, counter pleadings and the materials produced on either side has awarded a compensation of Rs.1,14,700/-. Challenging the order passed by the Tribunal, the appellant / Insurance Company has preferred this present appeal.

5. The learned counsel for the appellant contended that the Tribunal failed to appreciate the scope of M.V.Act and also the policy marked as Ex.R.1 properly in the light of several decisions of the Apex Court followed by this Court and ought to have held that the petition is not maintainable under Law.

6. The learned counsel for the appellant submitted that the respondent was not hired by any other person and the vehicle was used to carry his own goods and he was travelling in the vehicle, hence the insurance company / appellant is not liable to compensate the respondent.

7. It is also the plea of the appellant that the van had plied without registration number that too for carrying the goods, which is a violation of Motor Vehicle Act as well as the terms of the policy. Hence he pleaded to set aside the order passed by the court below.

8. The learned counsel for the respondent has submitted that the award passed by the Tribunal does not require any interference in the hands of this Court.

9. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

10. From the perusal of the order passed by the Tribunal, it is seen that the respondent examined himself as P.W.1 and marked Exs.A.1 to A.5 to prove his case. The Ex.A.1, FIR was registered by Kandhili Police Station against the driver of

the vehicle, namely, Thirupathi on 12.01.2008. It further discloses that the said driver had driven the vehicle in a rash and negligent manner and caused the accident. In order to disprove the same, there is no oral or documentary evidence adduced on behalf of the appellant. Hence the Tribunal has rightly fixed the negligence on the driver of the vehicle.

11. As far as the quantum is concerned, considering the evidence of P.W.2, Doctor, who has marked Ex.A.6, Disability Certificate stating that the respondent had suffered 45% disability, further taking note of the age of the respondent also the fact that he was doing coconut business, the Tribunal has awarded a sum of Rs.1,14,700/-, which is a just and reasonable compensation.

12. The grievance of the appellant before the Tribunal as well as before this Court is that they are not liable to pay the compensation because neither the respondent furnished the particulars of the accident nor he is the 3rd party to the appellant. However, taking note of Ex.A3, Insurance Policy, which is insured with the appellant for 3rd party liability and owner/driver coverage, cleaner / conductor and coolies, the Tribunal stated that the respondent had carried his goods and was also conducting the van, hence held that the appellant is liable to pay the compensation.

13. It is pertinent to point out the decision of Hon'ble Division Bench of this Court in C.M.A.No.1428 of 2017 dated 26.10.2017 between The Divisional Manager, M/s United India Insurance Co., Ltd., Kurinjipadi Taluk V.R.Rekha and others wherein it is held as follows:

> '28.......In case the owner of the vehicle happened to be the breadwinner of the family, it will cause a dent in the financial source of the family. On the other hand, due to the negligence of the owner of the vehicle, if a third party suffers bodily injury or even death, such third party or his family members will get adequate compensation from the insurance company befitting to the pecuniary loss sustained by the injured or on account of the death of the deceased. On the contrary, if the owner of the vehicle himself sustain bodily injury or dies in a motor accident, due to his or her own negligence, the owner of the vehicle or his or her family members will not get compensation befitting to the actual pecuniary loss of the deceased or injured, but only a lump sum compensation of Rs.1,00,000/-.'

14. Apart from that, in the decision of this Court in C.M.A.No.3006 of 2012 and M.P.No.1 of 2012 between the National Insurance Co., Ltd., V. Krishnan and others, it is stated as follows:

> '36. If the contention of the appellant-Insurance company has to be accepted, then, no compensation can be awarded under other heads, viz., disability, loss of earning, pain and suffering or under any other pecuniary and non-pecuniary losses. Even the respondent / claimant will not be in a position to get back Rs.1,15,934/- incurred by him towards medical expenses. Such a narrow construction of limiting the compensation only to Rs.1 Lakh, cannot be made, when sufficient oral and documentary evidence, has been adduced to prove that the pecuniary and non-pecuniary losses suffered by the injured, exceeds the maximum limit. Restricting the compensation to only Rs.1 Lakh would defeat the very intention of the legislature, to award just compensation to the accident victim, and it will not be in conformity with the judgments of the Apex Court.'

by stating so, in the said Judgment, this Court had dismissed the appeal of the Insurance company.

15. The aforementioned judgment squarely applies to the case on hand. In the present case, when the respondent has sustained multiple and severe injuries, resulting in disability of 45%, restricting the quantum of compensation to the maximum amount of Rs.1,00,000/- as per the policy, would defeat the principles of just compensation. Even assuming for the sake of argument that no additional premium was paid by the respondent so as to cover him as owner of the vehicle, it is crystal clear that as per Ex.A.3, Insurance policy, at the time of accident, vehicle was insured with the appellant for 3rd party liability, which covers owner cum driver and cleaner cum conductor and coolies. In this case, though the respondent is the owner of the vehicle, he travelled in the vehicle, and he is not the driver, however, the respondent falls within the ambit of cleaner cum conductor and the same is rightly held by the Tribunal.

16. Accordingly, this Court is of the view that the order passed by the Motor Accidents Claims Tribunal [learned Principal Subordinate Judge, Krishnagiri] in M.C.O.P.No.261 of 2009 dated 14.06.2011 does not require any interference and the same stands confirmed and the present appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

ssd

To

1.The Motor Accident Claims Tribunal,
[Principal Subordinate
Judge,] Krishnagiri.

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

NMI(CO)
EU 19.12.2020

C.M.A.No.506 of 2012