

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3535 of 2013 & 3536 of 2013

In CMA No.3535 of 2013

M/s. ICICI Lombard General Insurance
Company Ltd.,
Salem -4

..Appellant/2nd Respondent

Versus

1. Karuppayee
2.Gunasekar

...Respondents/Petitioner/
1st Respondent

In CMA No.3536 of 2013

M/s. ICICI Lombard General Insurance
Company Ltd.,
Chennai

..Appellant/2nd Respondent

Versus

1. Sumathi
2.Gunasekar

...Respondents/Petitioner/ 1st Respondent

Common Prayer:Civil Miscellaneous Appeals filed against the order and decree dated 26.08.2011 made in M.C.O.P.Nos.40 of 2008 and 58 of 2008 respectively on the file of the Motor Accident Claims Tribunal, (Sub-ordinate Judge), at Attur.

For Appellant : Ms.R. Sree Vidhya
(In both C.M.As).

For Respondent-1 : Mr.R. Asaithambi
(in CMA No.3535 of 2013)

For Respondent-1 : Mr. V.R.Annagandhi
(in CMA No.3536 of 2013)

R2 - Ex-parte - : No appearance
(in Both appeal)

C O M M O N J U D G M E N T

The Insurance company has preferred these appeals against the award and decree passed in favour of the claimants in M.C.O.P Nos.40 of 2008 and 58 of 2008 respectively on the file of the Motor Accident Claims Tribunal, (Sub-ordinate Judge), at Attur in result of the road accident.

2. The 1st respondents herein in the two appeals who are claimants before the Tribunal, were awarded compensation each. The Insurance Company who is the 2nd respondent before the Tribunal, was fixed liability to pay compensation to the claimants each. For the convenience, the parties are referred to the same ranking as before the Tribunal.

3.The brief facts of the case are as follows:

That on 23.10.2010, while the petitioner namely, Karuppayee in M.C.O.P. No.3535 of 2013 and another petitioner, namely, Sumathi, in M.C.O.P. No.3536 of 2013 were travelling along with others through the tractor bearing registration No.TN 30 T 8692 for harvesting the Maize crops from Sadasivapuram to go Sarvai, the Tractor passed through a pit thereby the said vehicle capsized on the road. As a result of which the petitioners and others sustained grievous injuries in the accident. Due to the impact of the accident, the both petitioners sustained grievous injuries and were admitted in the Hospital and treated therein. In view of the road accident, both petitioners had filed a separate claim petitions as aforesaid wherein both were awarded compensation after trial. Being aggrieved by the award passed in favour of the petitioners, the Insurance company/appellant herein in both appeals has filed the appeals questioning the liability on it and the quantum of the compensation awarded to the petitioners, before this Court.

4.The learned counsel for the Insurance Company/appellant herein would submit that the Tractor bearing registration No.TN 30 T 8692 alone was insured and the harvesting machine attached to the Tractor was not insured and the Tractor had no seating capacity other than the driver whereas six persons were travelled therein. Hence, such a risk is not required to be covered under the law nor covered under the terms of the policy. In view of the above, the claim petitions of both petitioners are contrary in law and on the facts and they are liable to be set aside.

5.The learned counsel separately appearing for the 1st respondent each in both petitions would jointly submit that the Tribunal has awarded compensation after considering the oral and documentary evidence let in by both parties. The tractor was overturned due to the rash and negligent driving of the driver

of the Tractor. If the driver would have driven carefully adhering to the traffic rules, the aforesaid accident could have been avoided. In the aforesaid accident, both petitioners sustained grievous injuries and were admitted in the hospital for treatment. Now, they are unable to do their work as before in the field work. Further, despite no premium was separately paid to the harvesting machine attached with the Tractor, the Tractor was insured with the appellant/Insurance Company and an extra premium has been paid for Cleaner, Conductor and Coolie under the category of B schedule. Therefore, the Insurance company is liable to pay the compensation to the petitioners/1st respondents herein. Hence, this Court may be pleased to confirm the award passed by the Tribunal in both claim petitions.

6. Heard, the learned counsel appearing for the Insurance Company/appellant herein and the learned counsel appearing for the 1st respondents in both appeals as well as perused the materials available on record. The Second respondent in both appeals has remained absent before the Tribunal as well as before this Court.

7. On the side of the petitioner in MCOP No.40 of 2008, P.W.1 & P.W.2 were examined and Ex.P.1 to Ex.P.21 were marked. On the other side, R.W.1 & R.W.2 were examined and Ex.R1 & Ex.R2 were marked. On the side of the petitioner in MCOP No.58 of 2008, P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P9 were marked. On the other side, R.W.1 & R.W.2 were examined and Ex.R1 to Ex.R9 were marked.

8. On consideration of the aforesaid facts and circumstances of the case and on perusal of the award, it is seen that when the harvesting Machine attached with Tractor was not insured with the Insurance company, wherein the claimants had travelled, how can the Insurance company is liable to pay the compensation to the claimants on the fault of driver of the Tractor. Further, the learned counsel for the appellant would submit that the Insurer need not indemnify the owner of the vehicle though he may be liable to pay the compensation. It is well settled law that the Insurance company cannot escape from the liability attributing the owner of the vehicle for the accident. The Tribunal has cited various judgments in the award wherein the general proposition is that the agricultural labourers having carried for the agricultural work in the Tractor, they should be compensated either by the Owner of the Vehicle or Insurance Company. In the present case, the injured were carried for the agricultural work in the Tractor and extra premium for Coolie was also paid by the owner of the vehicle whereas there is no dispute in the liability fixed on the Insurance Company. Hence, this Court is of the considered view that the Tribunal has come to the right conclusion by fixing

liability on the side of the appellant/Insurance company as the factum of the accident and the manner of the accident are rash and negligence of the driver of the Tractor which is not in dispute under Section 163A. As far as the quantum of the compensation awarded by the Tribunal is concerned, this Court is of the considered view that the Tribunal has awarded compensation of Rs.47,500/- and Rs.77,500/- to the petitioner in M.C.O.P. No.40 of 2008 and to the petitioner in M.C.O.P. No.58 of 2008 respectively after thoroughly considering the oral and documentary evidence as per the law. Hence, this Court is not inclined to interfere with the quantum of the award passed by the Tribunal. Therefore, the award passed in both claim petitions in M.C.O.P. No.40 of 2008 and M.C.O.P. No.58 of 2008 are hereby confirmed.

7. The Insurance company/appellant herein in both appeals is directed to deposit the award amount as awarded by the Tribunal to the Credit of the M.C.O.P. No.40 of 2008 and M.C.O.P. No.58 of 2008 along with interest @7.5% p.a. from the date of petition, within a period of three weeks from the date of receipt of copy of this Judgment.

8. The petitioners/Claimants in M.C.O.P. No.40 of 2008 and M.C.O.P. No.58 of 2008 are entitled to withdraw their respective award amount as awarded by the Tribunal by filing a formal petition before the concerned Tribunal.

9. In the result, the appeals in C.M.A. No.3535 of 2013 and C.M.A.3536 of 2013 are dismissed and the Award passed by the Tribunal in M.C.O.P. No.40 of 2008 and M.C.O.P. No.48 of 2008 are confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

lbm

Copy To:

1.The Motor Accident Claims Tribunal,
(Sub-ordinate Judge), at Attur.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 11296

C.M.A.Nos.3535 of 2013 & 3536 of 2013

LN(CO)
GN(03/11/2020)



WEB COPY