

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1357 of 2014

and

M.P.Nos.1 & 2 of 2014

M/s. United India Insurance Co., Ltd.,
Divisional Office - I,
Sri Ranga Complex,
Salem - 7.

... Appellant /Respondent-II

Versus

1.M.K. Govindarajan

2.Sri Malliga Mills (P) Ltd.,
5/60, Bridge Road,
Pallipalayam Post,
Tiruchengode Taluk,
Namakkal District.

... Respondents/Petitioner &
Respondent I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 29.04.2013 made in M.C.O.P.No.1083 of 2006 on the file of The Motor Accidents Claims Tribunal, Ist Additional Subordinate Judge, Salem District.

For Appellant : Mr. J. Chandran

For Respondent 2 : No Appearance

For Respondent 1 : unclaimed

For Respondent 1 : unclaimed

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 29.04.2013 passed by the

Motor Accidents Claims Tribunal, Ist Additional Subordinate Judge, Salem District in M.C.O.P.No.1083 of 2006.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) On 15.05.2006 the instructor of Sri Balani Driving School Sri.Jayaraman tuting the student of Raju and other students. At that time, the said Raju driving the vehicle Maruthi Van bearing Registration No.TCZ 4666 along with the training students from Pannakinaru to Karattuvalavu Road from east to west on the extreme left side of the road. At that time, the respondent bus TATA Mini Bus bearing Registration No. TN-34-C-3898 which was coming from opposite direction in a rash and negligent manner dashed the Van on the right side and rubbed the body of the Van fully.

(ii) The first respondent/claimant has filed a claim petition under Section 163 (A) and 166 of The Motor Vehicles Act, 1998 (for short 'the Act') claiming Rs.1,85,985/- as compensation for the damages caused to the Maruti Van bearing Registration No. TCZ 4666 by the TATA Mini Bus bearing Registration No. TN-34-C-3898. Having considered the materials on record, the Tribunal has awarded a sum of Rs.1,45,186/-.

(iii) Aggrieved by the award dated 29.04.2013 passed in M.C.O.P.No.1083 of 2006, the instant appeal has been filed by the Insurance Company.

3. Heard Mr. J. Chandran, learned counsel for the appellant. Though notice was served on the respondents, there is no appearance for them either in person or through learned counsel.

4. The learned counsel for the appellant submitted that the Tribunal awarded a huge sum of Rs.1,45,186/- for the damages caused to the vehicle of the claimant, without considering the conditions of the policy. According to him, the policy conditions clearly stipulates that it is a policy with limited liability which clearly denotes it as an Act Policy. As per the conditions of the policy, the liability of the Insurance Company is restricted to and limited only to the minimum of Rs.6,000/-. Therefore, according to the counsel for the appellant, the appellant/Insurance Company is liable only to pay a sum of Rs.6,000/- under the Act policy, however, the Tribunal awarded

an exorbitant sum of Rs.1,45,186/- as compensation and it is liable to be interfered with. If any amount is determined as compensation over and above Rs.6,000/- such amount has to be paid only by the owner of the vehicle and it cannot be mulcted on the Insurance Company. The Court below has erroneously awarded Rs.59,450 for painting, tinkering, and bodyworks; Rs.78,736/- for purchasing spare parts and Rs.7,000/- for seat and tyre works which is without any basis. The own damage caused by the claimant cannot be compensated by the Insurance Company and the entire claim against the appellant is not bonafide. Further, the nature of damage caused to the vehicle of the claimant has not been substantiated by any documentary evidence, including the certificate of a qualified Engineer etc., The assessment made by the Tribunal for awarding compensation was only on its own discretion rather than oral and documentary evidence available on record. Therefore, the learned counsel for the appellant prayed for setting aside the award of the Tribunal.

5. I have gone through the materials available on record. The Court below awarded a sum of Rs.1,45,186/- and directed the Insurance Company as well as the owner to pay such amount to the claimant, jointly and severally. Before the Tribunal, the Insurance Company has filed a counter affidavit contending that the policy in question is an Act Policy as per which the liability of the Insurance Company is limited and restricted only to Rs.6,000/-. The appellant also marked the Insurance Policy Certificate as Ex.R1 before the Tribunal. The counter filed by the Insurance Company before the Tribunal shows that Insurance Company admitted the accident as also the fact that the Insurance Policy was in force on the date of accident. As per the limited liability it is seen that the claim amount will be restricted only up to 6,000/- for the damages suffered for the vehicle. Even though it is found that that Maruthi Van was hit by the Mini Bus of the first respondent in the claim petition namely Sri Malliga Mills Pvt Ltd., the owner remained exparte before the Tribunal. When the Insurance Policy limits and restricts the liability of the Insurance Company, which is evident from Ex.R1, towards damages to the vehicle, the liability fixed on the Insurance Company by the Tribunal cannot be sustained. It is open to the claimant to proceed against the owner of the vehicle for recovering the amount awarded by the Tribunal, less 6,000/- payable by the appellant/ Insurance Company.

6. Accordingly, the award passed by the Tribunal with respect to quantum of compensation is confirmed and the liability fixed on the appellant is only Rs.6,000/-. The Civil

Miscellaneous Appeal is allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed. The liability of the appellant/insurance company towards the claimant is fixed at Rs.6,000/- which they shall deposit before the Tribunal, within a period of eight weeks from the date of receipt of this judgment and on such deposit, the claimant shall withdraw the same. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AT

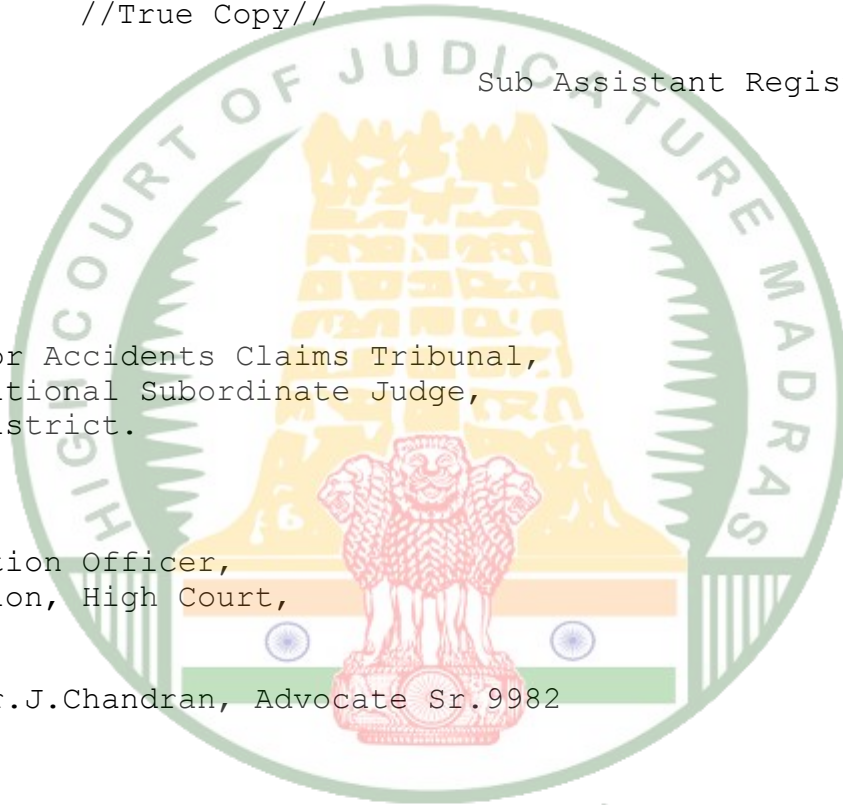
To

The Motor Accidents Claims Tribunal,
Ist Additional Subordinate Judge,
Salem District.

Copy to

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

+lcc to Mr.J.Chandran, Advocate Sr.9982



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