IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3626 of 2019
C.M.P.No.20864 of 2019

The Divisional Manager,
United India Insurance Company Limited,
Motor Third Party Claims Office,
No.66, 68, Gandhi Road,
Kanchipuram. .. Appellant/2nd Respondent

vs.

1.R.Amul
2.R.Yuvaraj
3.R.Kannan
4.R.Suresh
5.D.Kannagi ..Respondents 1 to 5/Claimants
6.G.Krishnan ..6th Respondent/4th Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.443 of 2015 (Old M.C.O.P.No.187/2009) dated 24.09.2018 on the file of the Motor Accident Claims Tribunal/District Court No.II, Kanchipuram.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Sivakumar for RR1 to 5
R6-Service awaited

J U D G M E N T

The Judgment and decree dated 24.09.2018 passed in M.C.O.P.No.443 of 2015 (Old M.C.O.P.No.187 of 2009) is under challenge in the present appeal.

2. The learned counsel appearing on behalf of the appellant/United India Insurance Company Limited, sterroneously contended that the claim petition itself is not maintainable, in view of the fact that there is no policy coverage. The deceased was traveling in a Trailer attached with Tractor and there is no insurance coverage in the Trailer. Admittedly, the Trailer is an

unregistered portion of the Tractor, which is attached illegally. Therefore, the claimants are not entitled for compensation.

3. The learned counsel for the appellant/Insurance Company reiterated that the Tribunal adjudicated the facts in the right track and undoubtedly, failed to adjudicate the meagre ground raised by the appellant regarding the maintainability of the claim petition as well as the ground of no policy coverage.

4. The accident occurred on 20.12.2008 at about 2.00 p.m. and the deceased was aged about 43 years and he was working as a Coolie. In the claim petition, it is stated that the deceased/Mr.D.Ramakanthan was standing to the extreme left side of the road in Thirumookodal Village. However, during the trial, the said fact was objected by the Insurance Company and it is established through the evidence that the deceased was traveling along with other five coolies in the Trailer attached with Tractor. Admittedly, the Tractor is an un-registered one and six coolies were traveling on the top of the Trailer. On account of rash and negligent driving of the driver of the Tractor, the Trailer capsized and wooden blocks and trees were fallen on the coolies. Due to which, the deceased died and other coolies sustained injuries.

5. With reference to the facts proved before the Tribunal, it is relevant to consider the findings of the Tribunal, more specifically, in paragraph No.7 of the Judgment, which is extracted hereunder:

> "To prove the accident one Tr.Mari was examined as P.W.2. He has categorically stated that the deceased and 5 others travelled on the trailor attached to tractor. The tractor loaded with trees and at the accident, the vehicle capsized and trees fallen on the collies in which the deceased was died. The accident was occurred due to rash and negligent driver of the Tractor, who is the owner of the Tractor the 1st respondent herein."

6. Further, the Tribunal arrived a factual finding that on the date of accident, driver of the first respondent's vehicle had no valid driving license. It is a breach of policy condition. First of all, the Trailer was not insured which is the stand taken by the appellant/Insurance Company, though taken the point for consideration, the Tribunal not adjudicated the same and arrived a conclusion as under:

> "Considering the submissions of both sides and on perusal of records, it is proved that the 1st respondent

has no valid license at the time of accident. The deceased also travelled in the trailor as coolie for Agricultural purpose. Though it is policy violation, the 3rd parties claimants cannot be suffered. Considering the above Judgments of our Hon'ble High Court of Madras,it is just and proper to ordered pay and recovery. Hence this Tribunal feels that it is just and proper to order pay and recovery.

In view of the above discussion, this Tribunal comes to the conclusion that on the date of accident the policy for pulling vehicle tractor is valid and covering the date of accident. Therefore, the respondents 1 and 2 are liable to pay compensation to petitioners. However, considering the policy violation the insurance company the 2nd respondent is directed to pay compensation to the petitioners and recover the same from 1st respondent based on this decree itself by way of execution application. This point is answered accordingly in favour of the petitioners. "

7. The findings of the Tribunal reveal that the policy is available for Tractor and Trailer, which is not registered. As per the terms and conditions of the policy, there is no coverage for the coolies who are all travelling in the un-registered Trailer. Thus, the liability fixed on the appellant/Insurance Company is an error and the Tribunal has not adjudicated the policy coverage and the liability of the Insurance Company to pay compensation. The question of pay and recovery arises, if there is any breach of terms and conditions of the policy. The driver of the Tractor was not possessing the driving license and the Tribunal has not considered the fact that the Trailer attached with Tractor is not registered and the coolies, who were traveling on the Trailer, are not covered under the policy. In fact, Trailer itself is not covered under the policy. When absolutely no policy coverage in terms of the Insurance Policy, the Tribunal has committed an error in fixing the liability on the Insurance Company and granting compensation.

8. The preliminary points to be decided by the Tribunal in such circumstances are that there must be a policy coverage and the liability under the Motor Vehicles Act is based on the Insurance Policy. The terms and conditions of the policy are of paramount importance. The terms and conditions are binding on the parties. The policies are issued by the Insurance Company under the terms of Statute. Statutory liability cannot be averted by the Insurance Company. With reference to certain contractual liability, terms and conditions are to be looked into. The word "compensation" as well as "benefit" are

distinguishable. The benefits are agreed between the parties with reference to the terms and conditions. However, compensation is a statutory liability which is to be fixed strictly in accordance with law and the provisions of the Motor Vehicles Act. In the present case, the liability aspect itself is not adjudicated by the Tribunal. Admittedly, the Trailer attached with the Tractor is not registered nor there is a policy coverage. If there is no policy coverage for the Trailer itself, absolutely the liability cannot be fixed so as to grant compensation to the coolies who are all traveling on the Trailer. Though the passengers are unauthorized passengers, there is no policy coverage. Under those circumstances, the question of ordering pay and recovery does not arise at all. This Court also considered the issues in C.MA.No.3295 of 2017 dated 11.03.2020 and the relevant paragraphs are extracted hereunder:

> 5. Though the Tribunal arrived a conclusion that the claimant was an unauthorised passenger and there is no permit for passengers to travel in the Eicher Van, erroneously fixed the liability on the Insurance company. This apart, the Tribunal has arrived a conclusion that the Insurance company has no liability with respect to the passengers. Further, it is found that the owner of the vehicle is liable to satisfy the decree. When the Tribunal categorically made a finding that the Insurance company has no liability and the owner of the vehicle is liable to satisfy the decree erroneously, passed the decree against the insurance company to pay the compensation and recover the same fro the owner of the vehicle.
>
> 6. When there is a competent violation of the permit conditions and policy and in the absence of any contract, there is no question of ordering Pay and Recovery. Pay and Recovery under Section 149(4) can be ordered only in certain circumstances, wherein there are certain violations of the policy conditions. But in the present case, there is no coverage at all. When the terms and conditions are unambiguous and there is no coverage of policy, then the Tribunal also arrived a conclusion that the Insurance company is not liable to pay compensation, then the Tribunal has erroneously passed the decree to pay the compensation and recover it from the owner of the vehicle. Such an order is perverse and not in consonance with the principles in the matter of dealing with the unauthorised passengers.

9. With reference to the facts and circumstances, the learned counsel appearing for the respondents/claimants reiterated that the Tribunal has considered all these aspects and made a finding that on the date of accident, the policy for pulling vehicle tractor is valid and covering the date of accident. Therefore, the Insurance Company is liable to pay compensation to the claimants. When the Tribunal arrived a conclusion that there is a coverage with reference to the policy, there is no error apparent and accordingly, the appeal is to be dismissed.

10. This Court is of the considered opinion that the Trailer attached with the Tractor is not a registered one. It is proved that there is no policy coverage for the Trailer. When there is no policy coverage for the Trailer and it was established that the deceased was travelling in the attached Trailer, the Tribunal has committed an error in fixing the liability and granting compensation to the claimants. Under these circumstances, the compensation granted by the Tribunal is perverse and accordingly, the Judgment and Decree dated 24.09.2018 passed in M.C.O.P.No.443 of 2015 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

11. The appellant/Insurance Company is permitted to withdraw the deposited amount, if any, with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

ssb

To

1.The District Court No.II,
The Motor Accident Claims Tribunal,
Kanchipuram.

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

Page numbers

+1cc to Mr.C.Prabakaran, Advocate SR.29769

KK(CO)
CB(08/01/2021)

Page numbers