BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A.(MD) No.1176 of 2006
and
M.P.(MD) No.2 of 2006

New India Assurance Co. Ltd.,
Branch Manager, Madurai ... Appellant/2nd respondent

-vs-

1.Kathali Narasingaperumal ...1st respondent/Petitioner

2.V.Kosalai ...2nd respondent/1st respondent

3.IRDA
(Insurance Regulatory Development Authority)
Parisrame Bhavan
Basheer Bagh
Hyderabad, Telengana District ... 3rd Respondent
[R3 *suo motu* impleaded vide court order dated 23.12.2016]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 07.11.2005, passed in M.C.O.P.No.1001 of 1999, on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.B.Murugan for R1
R2 Set Ex-Parte before the Tribunal

J U D G M E N T

This civil miscellaneous appeal arises out of the Judgment and Decree dated 07.11.2005, in M.C.O.P.No.1001 of 1999, on the file of the Motor Accident Claims Tribunal / III Additional Sub Court, Madurai.

2. The claim petition was filed by the first respondent seeking compensation of Rs.30,497/-. It is the case of the claimant that he is the owner of a hotel under the name and style of Balu Hotel, situated near SVN College, Nagamalaipudukottai, Madurai District. On 03.11.1998, at 00.31 hours, a lorry bearing registration No.MDA 5862 belonged to the second respondent and insured with the appellant - Insurance Company dashed against the claimant's hotel and thereby, his hotel got damaged. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the lorry, the claimant laid a claim petition for compensation.

3. The claim was opposed by the appellant - Insurance Company mainly contending that the policy is a limited policy and as per the policy conditions, the claim for the third party's property damages is limited upto Rs.6,000/- and therefore, incase of making them liable to pay compensation, they are liable to indemnify the loss only upto Rs.6,000/-.

4. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P1 to P7 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked.

5. Upon consideration of the oral and documentary evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the vehicle and awarded a compensation of Rs.21,697/- along with interest at the rate of 7.5% per annum and held that the appellant - Insurance Company being the insurer of the vehicle is liable to pay the same to the first respondent / claimant. Aggrieved over the same, the Insurance Company has filed the present civil miscellaneous appeal.

6. Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant - Insurance Company would submit that admittedly, the claimant is a third party, whose property got damaged in the motor vehicle accident occurred due to the rash and negligent driving of the driver of the vehicle. According to the learned counsel, Section 147(2)(b) of the Motor Vehicles Act, 1988 prescribes a maximum limit of Rs.6,000/- for the damage to any property of a third party. However, the Tribunal has erroneously made the appellant - Insurance Company liable to pay the award amount of Rs.21,697/- and therefore, prayed to set aside the impugned Award passed by the Tribunal. In support of his contentions, the learned counsel placed reliance upon ***Komeravel Gounder v. Bajaj Allianz General Insurance Co.*** reported in ***2013 (1) TN MAC 120(DB)***.

7. Per contra, Mr.B.Murugan, learned counsel appearing for the first respondent / claimant would contend that the offending vehicle was insured with the appellant - Insurance Company and hence, they are liable to satisfy the claim as the dispute is between the insurer and the insured. He would further contend that for the breach of policy conditions, the claimant should not be driven to suffer and the Tribunal has rightly awarded the compensation and made the appellant - Insurance Company liable to pay compensation and hence, he prayed for dismissal of the appeal

8. Heard the learned counsel on either side and perused the materials available on record.

9. The only issue arises for consideration in this appeal is whether the Insurance Company can be made liable to pay the entire compensation, when a claim was made by the third party, whose property got damaged in a motor vehicle accident.

10. At this juncture, it is apposite to refer Section 147(2) of the Motor Vehicles Act, 1988, which is extracted hereunder:

> *"(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, upto the following limits, namely:-*
>
> *(a)save as provided in clause (b), the amount of liability incurred;*
>
> *(b)in respect of damage to any property of a third party, a limit of rupees six thousand:*
>
> *Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier."*

11. In ***Komeravel Gounder***'s case (cited supra), the Honourable Division Bench of this Court has held that a statutory liability cannot be more than what is required under the statute and when such being the legal position, the limited statutory liability cannot be expanded to make it unlimited or higher. The relevant paragraph wound run thus:

> *"24. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the Statute itself. However, there is nothing in Section 147 of M.V.Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risks. In such an event, the Insurer is bound by the terms of the contract as specified in the Insurance Policy in regard to unlimited or higher liability as the case may be. In the absence of such premium or clause in the Insurance Policy, pursuant to the contract insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the Statute or the contract of insurance, which is not permissible."*

12. In the matter on hand, admittedly, the claimant is a third party and he made a claim for the damage of his property in a motor vehicle accident. It is relevant to note that the insurance policy covers only statutory liability and it is not the case of the respondents that there exists contract between the insurer and the insured to cover unlimited or higher liability risks. So, in view of the above settled legal position, this Court is of the view that the appellant - Insurance Company is liable to pay only Rs.6,000/- as compensation to the claimant, even though the Tribunal awarded a compensation of Rs.21,697/-. Insofar as the remaining amount is concerned, the claimant shall collect the same from the owner of the vehicle.

13. At this juncture, the learned counsel appearing for the appellant - Insurance Company submitted that as per the interim orders of this Court, the appellant - Insurance Company has deposited the entire award amount with accrued interest and costs and the first respondent / claimant had already withdrawn 50% of the award amount. In view of the above findings of this Court, it is open to the appellant - Insurance Company to recover the excess amount over and above the statutory limit of Rs.6,000/-, which was withdrawn by the claimant, from the owner of the vehicle and the appellant - Insurance Company is also permitted to withdraw the amount (i.e.50% of the award amount) lying in the credit of the claim petition. It is also open to the first respondent / claimant to claim the remaining 50% of the award amount from the owner of the vehicle in the manner known to law.

14. Resultantly, the civil miscellaneous appeal is partly allowed and the Judgment and Decree dated 07.11.2005, in M.C.O.P.No.1001 of 1999, on the file of the Motor Accident Claims Tribunal / III Additional Sub Court, Madurai, are modified to the effect as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy to

The Record Keeper,(2Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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