



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A. NO.2793 OF 2010

AND

M.P.NO.1 OF 2010

The United India Insurance Co. Ltd.,
146-N, Kumar Complex,
Tiruchengode,
Namakkal District.

... Appellant /2nd Respondent

..Vs..

1.Perumayee

... Respondent/Petitioner

2.P.Mani

... Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Additional District Judge, FTC-I, (MACT), Salem in M.C.O.P.No.1327 of 2004 dated 08.08.2009.

For Appellant : Mr.M.J.Vijayaraghavan
For Respondent-1 : Mr.R.Neelakandan

J U D G M E N T

Being aggrieved by the award passed by the learned Additional District Judge, FTC-I, Salem in M.C.O.P.No.1327 of 2004 dated 08.08.2009, the present appeal has been preferred by the appellant Insurance Company.

2. Heard Mr.M.J.Vijayaraghavan, learned counsel appearing on behalf of the appellant. In respect of notice to the second respondent, it is seen from the endorsements, it was returned as "no such addressee" on 20.04.2011, 22.03.2013, 04.04.2013 and moreover, the last registered post was also returned with acknowledgment 'not known' on 31.01.2014 and thereafter, no steps have been taken to serve on the second respondent. In this



appeal, the ground has been raised as against the second respondent insofar as the liability is concerned however, he was set ex-parte before the Tribunal but in the appeal, no notice has been served on the second respondent inspite of sufficient opportunities given and therefore, this Court has no other option except to dismiss the appeal as against the second respondent herein.

3. The brief facts of the case is as follows:-

a) On 28.05.2004 at about 2.30 hrs., the claimant was travelling in the Tipper lorry bearing registration No.TN-27-V-4779 while it was nearing Ariyannor EB office, the Tipper lorry dashed against a lorry standing on the left side of the road. The accident had occurred only due to the rash and negligent driving of the driver of the Tipper lorry which was insured with the appellant herein. Due to which, the claimant had suffered grievous injuries. Hence she had filed a claim petition, claiming a sum of Rs.3 lakhs for the injuries sustained by her in the accident.

b) Before the Tribunal, witnesses P.W.1 & P.W.2 were examined and exhibits P1 to P7 were marked as documents on the side of the claimant and R.W.1 was examined and exhibits R1 and R2 were marked on the side of the respondent/Insurance company. After analyzing the oral and documentary evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tipper lorry and directed the respondents therein jointly and severally to pay the compensation of Rs.97,842/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

c) The break-up details of the award passed by the Tribunal are as follows:-

S.No.	Heads	Amount (Rs.)
1	Permanent disability	70,000
2	Medical bill	19,542
3	X-ray bill	300
4	Wounds	8000
	Total	97,842



4. Aggrieved over the same, the appellant/Insurance Company has preferred the present appeal challenging the liability fastened on them to pay the compensation.

WEB COPY

5. According to the learned counsel for the appellant that the claimant/first respondent injured claims compensation for the grievous injuries sustained by her in the road accident that took place on 28.06.2004 while travelling in the Tipper lorry bearing registration No.TN-27-V-4779 belonging to the second respondent herein near Ariyanoor EB office, on account of the rash and negligent driving of the driver of the second respondent's vehicle, the aforesaid accident had happened. Therefore, the claimant has filed the claim petition as against the appellant as well as the second respondent herein. The learned counsel for the appellant in the counter statement filed before the Tribunal has denied their liability specifying that there is violation of the terms and conditions of the policy. The first respondent herein/claimant is an unauthorized passenger and therefore, the policy has not been covered for her which reveals that the owner of the vehicle has violated the terms and conditions of the policy. But the Tribunal without considering the said angle has fasten the liability as against the appellant/Insurance Company. Hence, the present appeal has been filed before this Court.

6. Considering the contentions of the appellant/Insurance Company, the claimant is an unauthorised passenger travelled in the Tipper lorry and therefore, there is violation on the terms and conditions of the policy and even though the appellant is not fasten for the liability but in view of the appeal dismissed as against the second respondent, this Court opines that no relief can be granted in the appeal but liberty is granted to the appellant/Insurance Company to proceed as against the second respondent/owner of the vehicle.

7. In view of the aforesaid reasonings, the Civil Miscellaneous Appeal is dismissed. However, this Court accepts the contentions of the Insurance Company in regard to violation of policy conditions by the owner of the vehicle/the second respondent herein and therefore, grants liberty to the appellant to proceed as against the second respondent to recover the said compensation amount in accordance with law.



8. In fine, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

WEB COPY

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

DP

To

1.The Additional District Court (FTC-I),
(The Motor Accident Claims Tribunal)
Salem.

Copy to

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

+1CC to Mr.M.J.Vijayaragavan, Advocate, SR.No. 5507

+1CC to Mr.R.Neelakandan, Advocate, SR.No. 5788

C.M.A. No.2793 of 2010
and M.P.No.1 of 2010

AJS(CO)

B.VC (20/09/2021)