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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.03.2021
Judgment Delivered on : 13.08.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2260 of 2012

United India Insurance Co. Ltd.,
No.74-A, Salai Road,
Trichy - 620 018

...Appellant/2nd Respondent

Vs.

1. R.Devanathan
S/o. Ramakrishnan

..1st Respondent/Petitioner

2. Boomadevi
W/o. Bose @ Agnivarman

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2368 of 2007 dated 20.04.2011 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.Sankara Narayanan
For Respondents : Mr.D.Ravichandran for R1
No Appearance - R2.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed by the Insurer/United India Insurance Company challenging the fair and decretal order dated 20.04.2011 passed in MCOP.No.2368 of 2007 by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Cuddalore.

2. The brief facts regarding the claim petition which are relevant to the appeal are as follows:

On 08.07.2006, while the claimant was travelling in first respondent's car bearing Registration No. TN-59-M-3333,



proceeding from Trichy to Chennai National High Way, a Lorry was parked on the road side for attending to repairs. It was bordered with stones. The driver of the car without observing the stones stacked, drove the car in a rash and negligent manner. The car ran over the stone, the driver lost his control and the car rolled down into the road side ditch. In the impact, the petitioner sustained grievous injuries which are as follows, 1. Fracture in both bones right leg 2. Closed fracture in shaft of femur right side 3. Compound fracture in right tibia 4. Fracture Fibula in right 5. Fracture Bilateral maxillary sinus with Haemosinuses and multiple grievous injuries all over the body. The driver of the Car also suffered injuries. Both of them were taken to Perambalur Hospital as out patients and then got admitted into the KMC Hospital, Trichy as inpatient for further treatment. The accident occurred only due to the rash and negligent driving by the driver of the car. The first respondent in the claim petition is the owner of the car and the second respondent is the Insurer. Due to the grievous injuries suffered by the claimant, he was unable to attend his day to day activities. He is unable to look after agricultural operations and he was unable to walk. Therefore, he had filed the claim petition in MCOP.No.2368 of 2007 on the file of the Motor Accidents Claims Tribunal, Cuddalore.

3. The second respondent/Insurance Company filed counter disputing the claim of the claimant.

4. After due enquiry, based on the assessment of evidence before the Tribunal, the Tribunal had passed the award for a sum of Rs.3,93,090/- as compensation.

5. Aggrieved by the award passed by the Motor Accident Claims Tribunal, the second respondent/Insurance Company had filed this appeal seeking to set aside the award.

6. Mr.Sankara Narayanan, the learned counsel for the appellant/Insurer submitted his arguments. His contention is that as per the claim petition, the claimant travelled in the car. The car met with an accident. Against the insurance company of the car, the claimant had claimed compensation. As per the conditions in the insurance policy which was marked as Ex.P-5, it is only an Act Policy and occupants of the car are not covered under the policy. When the 2nd respondent/Insurance Company had stated those details in the counter and objected to the claim petition, still the learned Tribunal ignored the contentions in the marked document as Ex.P-5 and also counter



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filed by the 2nd respondent and fastened the liability on the 2nd respondent/Insurance Company. Therefore, the 2nd respondent/Insurance Company had come before this Court by filing this appeal seeking to set aside the award regarding the liability fastened on the Insurance Company.

7. Mr.D.Ravichandran, the learned counsel for the respondent/claimant has submitted his arguments. As per his submissions, the Doctor who had assessed the injuries of the claimant had issued disability certificate, wherein it has been mentioned as 65% disability suffered by the claimant. However, the Tribunal has considered only 25% and the Motor Accidents Claims Tribunal had fixed the income for a sum of Rs.4000/- per month and calculated the compensation for a sum of Rs. Rs.1,44,000/- towards Permanent disability. As per the medical bills, the Tribunal awarded a sum of Rs.1,76,000/- towards Medical Expenses which is reasonable. The amount awarded under the other heads like Transportation, pain and sufferings, Extra Nourishment and loss of income for two months are not excessive. Therefore, Rs.3,93,090/- alone was awarded by the Tribunal is meagre. He relied on the ruling reported in 2001 (1) MLJ 548 (The New India Assurance Co., Ltd., Salem Vs. Vijayakumar and others). Therefore, this appeal lacks merits and it has to be dismissed.

8. Points for consideration

Whether the award passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Cuddalore is to be set aside?

9. Perused the claim petition filed by the appellants/claimants before the Motor Accident Claims Tribunal, Cuddalore in MCOP.No.2368/2007, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal, Cuddalore and the Memorandum of appeal filed in this appeal.

10. On a perusal of the award passed by the Motor Accident Claims Tribunal and the counter filed by the Insurance Company it is found that the respondent/claimant had not taken the Act Policy and therefore, the Insurance Company is not liable to pay compensation was not stated in the counter filed by the second respondent/Insurance Company before the Motor Accidents Claims Tribunal. The leaned counsel for the respondent/claimant had relied on the ruling reported in 2001 (1) MLJ 548 (The New India Assurance Co., Ltd., Salem Vs. Vijayakumar and others).



"Motor Vehicles Act (LIX of 1988), Sec. 95 (1) (b) (c) - injured claimants and the deceased travelling in a jeep - Jeep dashed against rocks and trees - Resulted in an accident - claim for compensation before the Tribunal - Tribunal holding that accident occurred due to the rash and negligent driving of the driver of the jeep - Tribunal awarded compensation to the parties - Appeal preferred against the order by insurance company - Whether the passengers in the jeep entitled to compensation as third parties - Accident took place after the coming into force of the new Act - Liability of the insurer - Policy of Insurance Act Policy' - Insurer cannot escape the liability.

The accident in the instant case having taken place on 24.05.1992, after the coming into force of the new Act, there can be no doubt that the Insurance Company is answerable for the claims by reason of injury to or death of the occupants of the vehicle"

Based on the reported rulings, this Court is of the view that the contention of the learned counsel for the Insurance Company was agitated. The contention cannot be agitated here without proper pleadings before the Tribunal. Therefore, the Order of the Tribunal does not warrant any interference by this Court. The award granted by the Tribunal is confirmed.

11. The point for consideration is answered in favour of the respondent/claimant and against the appellant/Insurance Company.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the total compensation of Rs.3,93,090/- as determined by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the first respondent/claimant is permitted to withdraw in accordance with law, less the amount if any already withdrawn by him.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar



1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Cuddalore.

+1 CC to Mr.P.Sankaranarayanan, Advocate sr 40872
+1 CC to Mr.D.Ravichandran, Advocate sr 40254
+1 CC to Mr.V.Raghavachari, Advocate sr 40249.

PL (CO)
SP (04/03/2022)