IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3009, 3019 & 3042 of 2019
and
CMP.Nos.16260, 16384 & 16584 of 2019

United India Insurance Company Limited,
Door No.19/2A, Junction Main Road,
Salem – 636 004. .. Appellant
(in all C.M.As)/2nd Respondent

Vs.

Suresh .. 1st Respondent
(in CMA.No.3009/2019)/Petitioner

Shankar .. 1st Respondent
(in CMA.No.3019/2019)/Petitioner

Subramani .. 1st Respondent
(in CMA.No.3042/2019)/Petitioner

2.S.Raju .. 2nd Respondent
(in all C.M.As)/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 31.10.2018 made in M.C.O.P.Nos.179, 182 & 186 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

In all C.M.As:

For Appellant	:	Mr.S.Arun Kumar
For R1	:	Mr.C.Kulanthaivel Notice Served
For R2	:	No appearance

C O M M O N J U D G M E N T

The matter is heard through “Video Conferencing/Hybrid mode”.

2.These Civil Miscellaneous Appeals are filed by the Insurance Company to set aside the common award dated 31.10.2018 made in M.C.O.P.Nos.179, 182 & 186 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

3.All these Civil Miscellaneous Appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.Nos.179, 182 & 186 of 2014 respectively on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. The 1st respondent in all the C.M.As filed the claim petitions in M.C.O.P.Nos.179, 182 & 186 of 2014 respectively, claiming a sum of Rs.25,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 18.07.2014.

5.According to 1st respondent in all the appeals, on 18.07.2014 at about 01.00 A.M., while they were travelling in the Tata Indica Car bearing Registration No.TN 30 AA 4650 on Idappadi - Koneripatti Main Road from Sivadapuram to Guruvareddiyur, Erode District, near Kosavankuttai, Pudupatti Pirivu, the driver of the car drove the same in a rash and negligent manner without observing the Road Traffic Rules and dashed against the Palmyrah Tree and due to the same, the car capsized and fell down in the road side pit and thus the accident occurred. In the accident, the 1st respondent in C.M.A.No.3009 of 2019 sustained closed communited fracture proximal 3rd shaft of right femur with fat embolism syndrome and multiple grievous injuries all over his body. Immediately after the accident, the 1st respondent in C.M.A.No.3009 of 2019 was taken to Vinayaka Mission Hospital, Seeregapadi and then shifted to Ganga Hospital, Coimbatore and has taken treatment from 18.07.2014 till filing of the claim petition. In the accident, the 1st respondent in C.M.A.No.3019 of 2019 sustained multiple laceration in face, communited distal radius fracture, displaced fracture in anterior wall of right maxillary sinus bleed in right maxillary sinus and multiple grievous injuries all over his body. Immediately after the accident, the 1st respondent in C.M.A.No.3019 of 2019 was taken to Neuro Foundation Hospital, Salem and admitted as inpatient from 18.07.2014 till filing of the claim petition. In the accident, the 1st respondent in C.M.A.No.3042 of 2019 sustained closed communited fracture shaft of right femur middle 1/3rd, shaft of left humerous middle 1/3rd diabetes mellitus and multiple grievous injuries all over the body. Immediately after the accident, the 1st respondent in C.M.A.No.3042 of 2019 was taken to Vinayaka Mission Hospital, Seeregapadi and then shifted to Ganga Hospital, Coimbatore and has taken treatment from 18.07.2014 till filing of the claim petition. Therefore, the 1st respondent in all the appeals filed the above said claim petitions claiming a sum of Rs.25,00,000/- each as compensation for the injuries sustained by them against the 2nd respondent and appellant-Insurance Company.

6.The 2nd respondent-owner of the car remained exparte before the Tribunal.

7.The appellant-Insurance Company filed separate counter statements and denied all the averments made by the 1st respondent in all the appeals. According to the appellant, the accident has not occurred as alleged by the 1st respondent in all the appeals. The appellant denied the manner of accident as alleged by the 1st respondent in all the appeals. According to appellant, the accident has not occurred due to the negligence on the part of the driver of the car owned by 2nd respondent, whereas, the accident has occurred due to sudden failure of brake of the car and due to the same, the car dashed against the Palmyrah Tree and the accident occurred. The car owned by 2nd respondent was permitted to ply only for his own purpose. Whereas, the 2nd respondent has hired the car to the 1st respondent in all the appeals for which the permit was not given. Hence, the appellant is not liable to pay any compensation to the 1st respondent in all the appeals. The appellant-Insurance Company denied the age, avocation, nature of injuries, medical expenses, period of treatment taken and disability suffered by the 1st respondent in all the appeals. In any event, the quantum of compensation claimed by the 1st respondent in all the appeals in all the claim petitions are highly excessive and prayed for dismissal of all the claim petitions.

8.Before the Tribunal, the 1st respondent in C.M.A.Nos.3009, 3019 & 3042 of 2019 examined themselves as P.W.1 to P.W.3 respectively and 28 documents were marked as Exs.P1 to P28. On behalf of the appellant-Insurance Company, one Palanisamy was examined as R.W.1 and copy of the Insurance Policy was marked as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car owned by 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.8,50,000/-, Rs.7,00,000/- and Rs.9,75,000/- as compensation to the 1st respondent in C.M.A.Nos.3009, 3019 & 3042 of 2019 respectively at the first instance and recover the same from the 2nd respondent-owner of the car.

10.Challenging the said common award dated 31.10.2018 made in M.C.O.P.Nos.179, 182 & 186 of 2014, the appellant-Insurance Company have come out with the present appeals.

11.The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent in all the appeals are occupants of the car and they are not third parties. The

Tribunal having held that 1st respondent in all the appeals are not third parties and are not entitled to claim compensation from the appellant, erroneously ordered pay and recovery directing the appellant to pay the compensation at the first instance and recover the same from the 2nd respondent-owner of the car. The Tribunal failed to consider that 1st respondent in all the appeals are not statutorily covered under liability only policy. The Tribunal ought to have directed the appellant to pay the compensation to the 1st respondent in all the appeals. The award of the Tribunal is contrary to the judgments of the Hon'ble Apex Court reported in 2006 ACJ 1441, 2009 ACJ 104 & 2015 (1) TNMAC 19 and prayed for setting aside the award passed by the Tribunal.

12.Per contra, the learned counsel appearing for the 1st respondent/caveator in all the appeals contended that the 1st respondent in all the appeals have not hired the car and traveled. The 1st respondent in all the appeals are only third parties to the 2nd respondent and appellant. They are covered by the policy issued by the appellant. R.W.1 examined by the appellant admitted that occupants of the car are third parties. The Tribunal considering all the materials, ordered pay and recovery and prayed for dismissal of all the appeals.

13.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

14.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent/caveator in all the appeals and perused the entire materials on record.

15.It is the case of the 1st respondent in all the appeals that while they were traveling in the car owned by 2nd respondent, the driver of the car drove the same in a rash and negligent manner, hit against the Palmyrah Tree and the car capsized thus the accident occurred. In the accident, the 1st respondent in all the appeals sustained injuries and disability. To prove the same, they examined themselves as P.W.1 to P.W.3 and marked F.I.R., which was registered against the driver of the car owned by 2nd respondent as Ex.P1. On the other hand, it is the case of the appellant that the car owned by 2nd respondent is permitted for his personal use, whereas, the 1st respondent in all the appeals have hired the car in violation of permit and policy conditions and traveled. The policy issued by the appellant is Act only Policy and it does not cover the occupants who travel in the car. The 1st respondent in all the appeals are not third parties. The Tribunal appreciating the materials placed before it, held that 1st respondent in all the appeals are not third parties and they are not covered by statutory policy. Having held so, the Tribunal erroneously ordered pay and recovery. When the owner has taken a policy as per Section 147 of the Motor Vehicles Act, 1988, i.e., Act Policy, the insurer is liable to indemnify the owner only in respect of claims made by third parties. The occupants of the car insured with insurer are not third parties. Unless the owner of the car pays additional premium to cover the occupants of the car, insurer is not liable to pay compensation for the claim of occupants of the car. When the insurer is not liable to pay any compensation, the question of pay and recovery does not arise. The Tribunal having held that 1st respondent in all the appeals are not third parties, erroneously ordered pay and recovery, directing the appellant to pay the compensation to the 1st respondent in all the appeals at the first instance and recover the same from the 2nd respondent-owner of the car. The said erroneous finding of the Tribunal is liable to be set aside and it is hereby set aside. The 2nd respondent-owner of the car is liable to pay the compensation to the 1st respondent in all the appeals.

16.In the result, all the Civil Miscellaneous Appeals are allowed and the compensation awarded by the Tribunal at Rs.8,50,000/-, Rs.7,00,000/- and Rs.9,75,000/- respectively to the 1st respondent in all the appeals together with interest and costs is hereby confirmed. The 2nd respondent is directed to deposit the respective award amount along with proportionate interest and costs, within a period of eight weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.179, 182 & 186 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. On such deposit, the 1st respondent in all the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that if any amount is deposited by the appellant and the same was withdrawn by the 1st respondent in all the appeals, the appellant is not entitled to recover the same from the 1st respondent in all the appeals. The appellant is entitled to recover the amount withdrawn by the 1st respondent in all the appeals from the 2nd respondent. The appellant is permitted to withdraw the award amount, if any lying in the credit of M.C.O.P.Nos.179, 182 & 186 of 2014, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
  Motor Accidents Claims Tribunal,
  Sankari.

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

+1 Cc to Mr.S.Arun Kumar, Advocate sr 16062.
+1 CC to Mr.C.Kulanthaivel, Advocate sr sr 15966.

C.M.A.Nos.3009, 3019 & 3042 of 2019

SMI(CO)
SP(26/10/2021)