IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2125 of 2017

The Divisional Manger,
The United India Insurance
Company Limited,
Katpadi Road, Vellore - 4.

..Appellant/2nd Respondent

Vs.

1. Kumaran ..1st Respondent/Petitioner

2. G.Madhavan

..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Award and Decree dated 21.07.2006, made in M.A.C.T.O.P.No.382 of 2002, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge,Tiruvannamalai.

For Appellant : Mr.B.Sathish Babu
for Mr.S.J.Jagadev

For Respondent 1: Mr.B.Jawhar

J U D G M E N T
(The case has been heard through video conference)

This appeal has been filed by the insurance company challenging the Award dated 21.07.2006, passed by the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruvannamalai in M.C.O.P.No.382 of 2002.

2. The appellant insurance company has challenged the impugned award questioning its liability to pay the compensation on the ground that the first respondent/claimant himself was a tortfeasor as he dashed the insured vehicle against the tree and no other third party vehicle was involved in the accident.

3. Admittedly, the first respondent/claimant was the driver of the insured commercial vehicle. Under Section 147 of the Motor Vehicles Act, if it is a commercial vehicle, the statutory liability is fastened on the insurance company to pay the compensation. The accident victim was the driver of the said commercial vehicle. Section 147 of the Motor Vehicles Act reads as follows:

> "Section 147 :Requirements of policies and limits of liability:
>
> (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place: Provided that a policy shall not be required--
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(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, up to 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.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer

shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. "

4. As seen from the evidence available on record, the accident happened only during the course of employment of the first respondent. The Award passed by the Tribunal is only for a sum of Rs.45,000/- together with interest and cost.

5. Therefore, this Court is of the considered view that there is no merit in this appeal and accordingly this appeal is dismissed. The appellant insurance corporation is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.382 of 2002, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruvannamalai. On such deposit of the compensation amount, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge
   The Motor Accident Claims Tribunal,
   Principal Subordinate Court, Tiruvannamalai.

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

C.M.A.No.2125 of 2017

SRA(CO)
SP(26/11/2021)