BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.935 of 2009
and
Cross Appeal (MD)No.24 of 2010

C.M.A(MD)No.935 of 2009

United India Insurance Co.Ltd.,
through its Divisional Manager,
Divisional Office,
7A West Veli Street, Madurai. ...Appellant/2nd Respondent

Vs.

1.Arumugam ... 1st Respondent/Petitioner

2.Maheswaran ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 19.06.2008 passed in MACOP No.17 of 2005 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Paramakudi.

For Appellant : Mr.I.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai
For R1 : Mr.D.Senthil
For R2 : No appearance

Cross Appeal (MD)No.24 of 2010

Maheswaran ...Cross Appellant/2nd Respondent

Vs

1.The United India Insurance Company limited,
Through its Divisional Manager,
Divisional Office,
7A, West Veli Street,
Madurai. ... 1st Respondent/Appellant

2.Arumugam ... 2nd Respondent/1st Respondent

PRAYER: Cross Appeal filed under Order 41 Rule 22(2) of C.P.C., to set aside the decree and judgment of Motor Accident Claims Tribunal (Sub-Court), Paramakudi regarding liability holding there is no violation of policy condition and insurer is liable to indemnify the insured/appellant herein.

COMMON JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal (Sub-Court), Paramakudi in M.C.O.P.No.17 of 2005, the Insurance Company has preferred this appeal.

2.Being dissatisfied with the decision of the Tribunal, the owner of the offending vehicle has come up the Cross-Appeal.

3.Brief facts of the case are that on 11.10.2004 at about 9.00 a.m., the claimant was travelling in a van belonging to the second respondent herein to purchase the coconut leaf and at that time, the driver of the van drove the vehicle in a rash and negligent manner and he lost the control of the vehicle and it capsized. In the said accident, the claimant sustained fracture in the left leg and injuries all over the body. Immediately, he was taken to Muthukulathur Government Hospital and after giving first-aid, he was referred to Government Rajaji Hospital, Madurai. The claimant would state that his left leg below knee was amputated and he was also given treatment in a private hospital and he underwent surgery. He would further state that he was 41 years old at the time of accident and he was doing coolie work and thereby, earning a sum of Rs.100/- per day.

4. The claim petition was resisted by the appellant/Insurance Company contending that the claimant travelled in a goods vehicle and hence, the Insurance Company is not liable to pay compensation. They have also disputed the age, income and avocation of the claimant. The second respondent herein and the appellant in Cross-Appeal remained ex-parte before the Tribunal.

5. On behalf of the claimant, three witnesses were examined as P.W.1 to P.W.3 and 14 documents were marked as Ex.P1 to Ex.P14 and on behalf of the appellant, one witness was examined as R.W.1 and no document was marked.

6. After analysing the evidence adduced by the parties, the Tribunal came to the conclusion that the accident took place due to the negligence of the driver of the van and awarded compensation of Rs.1,52,000/- directing the Insurance Company to satisfy the award and recover from the insured. Assailing the award, the present appeals have been filed.

7. The learned counsel appearing for the appellant would argue that the judgment and order of the Tribunal is contrary to law. It is further stated that the Tribunal having found that the injured claimant travelled in goods carriage, ought not to have made the Insurance Company to pay the compensation. He further added that when there is no coverage under the policy, the insurer is not liable to pay compensation. He further submit that there is no dispute in the quantum of compensation awarded by the Tribunal.

8. Per contra, Mr.D.Senthil, learned counsel appearing for the claimant would argue in support of the findings of the Tribunal.

9.Heard both sides and perused the materials available on record.

10. In the matter on hand, the findings on negligence is not seriously disputed by the appellant/Insurance Company and the only grievance is that the Tribunal has no jurisdiction to direct the appellant to pay the amount at the first instance and then recover from the owner of the vehicle.

11. A perusal of the claim petition and the testimony of P.W.1 would show that on 11.10.2004 the claimant travelled in the offending vehicle to purchase the construction materials for his employer Murugesan. It is not his case that after purchasing the construction materials, he travelled in the vehicle as a agent of the owner of the goods. So, it can be safely stated that he is not an employee of the owner of the vehicle. The materials available on record further reveals that the claimant was 41 years old and he was a coolie and in the accident, his left leg below knee was amputated. So, considering the facts of the case, the Tribunal though found that there is a violation of policy condition, directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle.

12. In the light of the above facts, I am of the opinion that the finding of the Tribunal does not warrant any interference of this Court and hence, the judgment and award passed by the Motor Accident Claims Tribunal (Sub-Court), Paramakudi in M.C.O.P.No.17 of 2005 is confirmed and the appeal is dismissed.

13. As noted above, the owner of the vehicle/second respondent in the appeal remained ex-parte before the Tribunal and he has now filed the Cross-Appeal (MD) No.24 of 2010 challenging the findings of the Tribunal on the ground that he has taken a comprehensive policy and the injured claimant travelled in the vehicle as representative of the owner of the goods. The Tribunal based on the evidence of P.Ws.1 & 3 found that the offending vehicle was

empty at the time of accident. Therefore, the Cross-objection filed by the owner of the vehicle is dismissed.

14. In the result, both the Civil Miscellaneous Appeal and the Cross-Appeal are dismissed. The appellant/Insurance Company shall deposit the award amount with 7.5% interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any and thereafter recover the same from the owner of the vehicle. On such deposit, the claimant is entitled to withdraw the entire amount. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

To
The Subordinate Judge,
Motor Accidents Claims Tribunal
Paramakudi.

Copy to
The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,Madurai.

+1 CC to Mr.D.SENTHIL, Advocate (SR-520[F] dated 07/01/2021)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-485[F] dated 07/01/2021)

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