BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020
Delivered on : 11.01.2021

CORAM:
THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD)No.407 of 2010
and
M.P.(MD)No.2 of 2010

The Manager,
United India Insurance Co. Ltd.,
280, Ooty Main Road, Mettupalayam,
Coimbatore District. ... Appellant /2nd Respondent

Vs.

1.S.R.Radhakrishnan ... 1st Respondent / Petitioner
2.Selvaraj ... 2nd Respondent/1st Respondent

(The 2nd Respondent remained exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award and decree dated 03.04.2009 in M.C.O.P.No.134 of 2007 on the file of the MACT, (Subordinate Judge), Karur.

For Appellant : Mr.I.Robert Chandrakumar

For R1 : Mr.K.Navaneetharaja for Mr.V.Balaji

For R2 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal is against the award and decree dated 03.04.2009 in M.C.O.P.No.134 of 2007 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Karur.

2. The case of the claimant before the Tribunal is that the claimant was running a Tailoring shop in a building on the Karur-Tarapuram Road in the place of occurrence. On 06.04.2006, at about 03.00 p.m., a lorry bearing Registration No.TN-37-L-1060 was driven by its driver in a rash and negligent manner and dashed the building, as a result of which, the building and as well as the

Tailoring equipments viz, Sewing machines and other tools were damaged apart from TV, radio, etc. and caused a total damage of Rs.71,584/- (Rupees Seventy One Thousand Five Hundred and Eighty Four only). Because of the damage to the Tailoring shop and the building, the claimant was not in a position to continue his earlier livelihood. Since the accident took place due to rash and negligent on the part of the first respondent, both are liable to pay compensation as prayed for in the petition.

3. The second respondent, who is the appellant herein, before the Tribunal contended that subsequent to the occurrence, information was not furnished to the Insurance company regarding the accident by the Insurer and other facts are denied as false.

4. In the enquiry, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and three documents marked as Ex.P1 to Ex.P3. On the side of the respondents, one witness was examined as R.W.1 and one document marked as Ex.R1.

5. At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place due to the rash and negligent driving on the part of the first respondent's vehicle driver and consequently, they were held liable regarding the damages. It assessed the same, at Rs.51,000/- (Rupees Fifty One Thousand only). Challenging the same, the Insurance Company has preferred this Civil Miscellaneous Appeal, mainly on the ground of liability to the extent mentioned in the order and as well as the quantum.

6. Regarding the liability, the appellant contended that the statutory liability as per Ex.R1 was only Rs.6,000/- as per Section 147(2) (b) of Motor Vehicles Act. Ex.R1 is the Policy Certificate, wherein, it has been noted that third party's property damage liability is restricted to Rs.6,000/- (Rupees Six Thousand only). According to the claimant, it is a comprehensive policy. Hence, what ever is suffered by the third party, the Insurance Company is liable to pay the amount on behalf of the Insured. But, since this is a statutory liability and if at all, if the insured person wanted to have a larger coverage, he could have paid the extra premium. Even though the petitioner is a third party and there is a statutory coverage limit to Rs.6,000/- (Rupees Six Thousand only) and in absence of any coverage for a larger liability, the Insurance Company cannot be fastened with any liability. If any third party suffers any damage exceeding Rs.6,000/-, the owner of the vehicle is liable to pay. So, the contention on the part of the claimant that since they are the third parties, who have incurred heavy loss due to the accident and it is difficult for recovering the damage from the Insured, cannot be accepted. Inconvenience will be there, but, this Court

cannot extend the liability, which was not at all sought to be extended by the Contractor of the parties. So, regarding the liability, this Court finds that the appellant is liable to pay only Rs.6,000/- towards the damages to the property and the balance amount has to be paid only by the owner of the vehicle, viz., the second respondent herein.

7. Regarding the assessment of damages, the claimant produced documents under Ex.P6, wherein, a total damage is estimated to be Rs.71,584.40 paise. The assessment was made by P.W.2, who would say that he was working as a Surveyor in United India Insurance Company, Oriented Insurance Company and National Insurance Company, etc. According to him, the building, in which, the claimant was running a Tailoring shop was completely damaged and Three Sewing machines, one table, three stools and a Television were found damaged. He was not examined to the effect that the assessment made by him, is not proper, since the building was constructed with tiles and palmyra rafters. Photographs were also produced, showing the extensive damage caused to the building as well as the material inside the building. So, a perusal of the photographs shows that the assessment made by the Surveyor, is found to be reasonable. But, the Tribunal has reduced the cost of the Sewing machine and electrical fittings, taking into account the depreciation. Such deduction due to depreciation is permissible in respect of third party claims. There is no cross objection by the claimant. But, however, the assessment is not legally sustainable, the entire claims has to be awarded. So, the compensation awarded by the Tribunal is liable to be enhanced to Rs.71,581/- rounded of to Rs.71,500/-.

8. The Tribunal has directed the appellant / Insurance company to pay the balance compensation amount of Rs.45,000/- (Rupees Forty Five Thousand only) on behalf of the second respondent and recover the same from him, probably on the ground that the claimant is the third party. But, as I mentioned earlier, pay and recovery question will arise only when there is policy violation. When there is no statutory or contractual liability, the Insurance Company cannot be ordered to pay and recover the same from the owner of the vehicle and that part is also ordered to be set aside.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal, directing the Insurance Company to pay the balance amount of Rs.45,000/- (Rupees Forty Five Thousand only) on behalf of the second respondent is set aside. The award is enhanced to Rs.71,500/- and this amount is ordered to be paid along with interest at the rate of 7.5% p.a. and costs by the second respondent herein, within a period of two months from the date of receipt of a copy of this order. On such

deposit being made, the claimant is permitted to withdraw the entire amount immediately, after filing proper petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
(11.01.2021)

FOR BEING MENTIONED-FURTHER DIRECTION

Civil Miscellaneous Appeal having been posted on 17.03.2021 "For Further direction". In pursuance to the order of this Court dated 11.01.2021 and made herein in the presence of the above said Advocates, this Court made the following order:

The matter is taken up for hearing today, under the caption 'for further direction' at the instance of the learned counsel for the appellant/Insurance Company.

2. As per the order dated 11.01.2021, the total compensation amount was fixed at Rs.71,500/- to be paid by the second respondent/owner of the vehicle. It is brought to the notice of this Court that a communication was received from the Tribunal stating that the appellant/Insurance Company has deposited Rs.25,000/- initially on 09.06.2009 and the same was invested in Indian Bank, Car Street Branch, Karur and later, deposited a sum of Rs.40,784/- on 30.04.2010 and the same was invested in State Bank of India, Main Branch, Karur.

3. As per the findings of this Court, the statutory amount of Rs.6,000/- is only liable to be paid by the appellant/Insurance Company. The balance amount has to be paid only by the owner of the vehicle, who is the second respondent herein. Due to some miscalculation, the total amount already paid by the appellant herein, was not taken into account, while passing the order, dated 11.01.2021. Hence, the following direction is issued;

i) Rs.6,000/- with accrued interest is permitted to be withdrawn by the first respondent herein/claimant on filing proper petition before the Tribunal.

ii) The balance amount of Rs.65,500/- with interest at the rate of 7.5% is ordered to be paid by the second respondent within a period of two months from the date of receipt of this corrected order copy.

iii) The Insurance Company is at liberty to withdraw the balance amount of Rs.59,784/- with accrued interest, if any.

4. The Registry is directed to issue a fresh order copy after incorporating the above direction.

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 Accident Claims Tribunal,
Karur.

Copy to
1.Selvaraj,
S/o.Thiru Venkatachalam, 393,
Kamarajar Road,
Peelamedu, Coimbatore.

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-921[F] dated 18/01/2021)

C.M.A.(MD)No.407 of 2010
11.01.2021

KM(30.06.2021) 5P 6C