BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.08.2022

Delivered On : 29.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.1210 of 2018

M/s.Reliance General Insurance
Company Limited,
15-A, PLA Gongu Towers,
11th Cross, Thillai Nagar,
Trichy – 18. .... Appellant / 3rd Respondent

Vs

1.Karnan ... 1st Respondent / Petitioner

2.Ramachandran

3.Karnan ... Respondents 2&3 /Respondents 1&2

(R2 is exonerated vide court order,
dated 29.07.2022 made in
CMA(MD)No.1210/2018.)

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, dated 06.10.2016, passed in M.C.O.P.No.123 of 2011, on the file of the Motor Accidents Claims Tribunal, Karur – Chief Judicial Magistrate, Karur insofar as liability is concerned.

For Appellant : Mr.V.Sakthivel

For R1 : Mr.G.S.Ashok Adhithyan

R2 : dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 06.10.2016, passed in M.C.O.P.No.123 of 2011, on the file of the Motor Accidents Claims Tribunal, Karur – Chief Judicial Magistrate, Karur. The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 and 3 herein are the respondents 1 and 2 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.123 of 2011, is as follows:

On 10.04.2009, at about 04.00 a.m, when the first respondent was driving a mini Van bearing Registration No.TN-48-AL-4172, the petitioner was travelling in the vehicle as a load man, the driver of the vehicle drove the vehicle in a rash and negligent manner and the vehicle capsized. The petitioner sustained injuries. He was admitted in Trichy Government Hospital and he took treatment as inpatient from 10.04.2009 till 21.04.2009 and then, he was admitted as inpatient in Thanjavur Government Hospital from 29.10.2009 till 15.01.2010, he sustained permanent disability and the petitioner claimed a sum of Rs.5,00,000/- as compensation.

3. Brief substance of the counter filed by the third respondent in M.C.O.P.No.123 of 2011 is as follows:

The first respondent did not have a driving licence. The petitioner has travelled in the vehicle as an unauthorized passenger. The age, income, profession are all denied. The claim is excessive.

4. Brief substance of the additional counter filed by the third respondent, in M.C.O.P.No.123 of 2011, is as follows:

The petitioner is the owner of the vehicle, he was impleaded as the second respondent. The petitioner is not entitled to any relief. The petitioner has falsely mentioned himself as the load man and cleaner in the complaint and in the F.I.R and prayed the petition to be dismissed.

5. On the side of the claimants, 2 witnesses were examined and 10 documents were marked. On the side of the respondents, 1 witness was

examined and 1 document was marked. After considering both sides, the Tribunal awarded a sum of Rs.1,35,000/- as compensation.

6. Against the order, the appellant/ Insurance Company has filed this appeal on the following grounds:-

The Tribunal has failed to consider that the claimant and the third respondent herein are one and the same person. The claimant is the insurer of the appellant. The claimant was travelling in the vehicle as the owner of the vehicle, he cannot be named as a third party. The Tribunal has failed to consider that the petition was filed both under Section 163(A) and under Section 166 of the Motor Vehicles Act which was not maintainable. The Insurance Company is not liable to pay compensation to the owner of the vehicle. The personal accident coverage is valid only when the owner drive the vehicle at the time of accident. In this case, the claimant was travelling only as a passenger and he is not entitled to any compensation.

7. On the side of the appellant, it is stated that the claimant and the owner of the vehicle is one and the same. The vehicle is a TATA Ace goods vehicle. The owner of the vehicle was sitting along the driver of

the vehicle. The owner cannot claim compensation from his own Insurance Company. Pleadings of the owner that he was travelling as a load man is not maintainable.

8. A judgment of the Hon'ble Supreme Court reported in ***2018-2-TNMAC-286 (SC) [National Insurance Co. Ltd., V. Ashalata Bhowmik and others]*** is cited by the appellant counsel, wherein, it is stated as follows:-

> *"The deceased was not a third party, but, he was the owner cum driver of the vehicle. The accident occurred due to rash and negligent driving of the deceased himself. No other vehicle involved in the accident. Claim under Section 166 of the M.V.Act, is not maintainable on basis of own fault and negligence. Insurer is not liable to pay compensation, since no liability can be fastened against the Insurer. The High Court is not justified in directing the Insurer to pay compensation as determined by the Tribunal."*

9. Another judgment of this Court reported in ***2017-2-TNMAC-674 (DB) [Divisional Manager, United India Insurance CO.Ltd., V. R.Rekha]*** is cited by the appellant counsel, wherein, it is stated as follows:-

"Deceased being owner / insured and not third party, insurer cannot be fastened with any liability under M.C.Act. The staututory liability of Insurer is only to extent of indemnification of insured against third party or in respect of damages to property. No question of holding insurer liable to indemnify insured for his own death. The deceased would not come within purview of Section 146 or 147 for purpose of payment of compensation."

10. On the side of the first respondent / claimant, it is stated that as per the policy-Ex.R1, there is a personal accident coverage up to Rs.2,00,000/-. In the policy, it was clearly mentioned that the driver include the owner. The claimant has paid Rs.100/- towards personal coverage. Rs.25/- premium for the driver and Rs.50/- for Cooliee The claimant was working as the load man, at that time, the claimant travelled only as a load man not as the owner of the vehicle. R.W.1 has admitted that the policy cover personal relief.

11. By way of reply, on the side of the appellant, it is stated that only in case of fatal accident or in case of loss of limb or permanent disablement, there is policy coverage for the owner. Here, the claimant

has sustained only 30% partial permanent disability. The claimant is not entitled to claim any compensation.

12. Admittedly, the claimant has paid an additional premium for personal liability. It is seen that R.W.1 has admitted that the policy is a package policy and one passenger can travel along with the driver and that the owner of the vehicle has paid premium for the driver, driver cum owner and for the Cooliee. It is the duty of the Insurance Company to give in clear terms, what are the liabilities covered under the policy; what are the liabilities not covered under the policy. The Insurance Company has collected premium for the owner and now the Insurance Company is claiming that the policy is not valid for the owner, unless there is a fatal accident or loss of limb. When the Company is receiving premium, it is the duty of the Insurance Company to intimate the Insurer about the drawbacks in the policy. It is seen that the Insurer was having 30% partial permanent disability. In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal and hence, the appeal is dismissed. No costs.

13. The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.1,35,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

14. On such deposit being made by the Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default.

29.09.2022

Index:Yes/No
Internet:Yes/No
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To
1.The Motor Accidents Claims Tribunal, Karur –
Chief Judicial Magistrate , Karur.
2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.THARANI.,J.

Ls

Pre-delivery Judgment made in

C.M.A(MD)No.1210 of 2018

29.09.2022