BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.12.2022

Delivered On : 23.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1105 of 2018

M/s.United India Insurance Co., Ltd.,
Divisional Office,
Jeeva Jothi Buildings,
Salai Road, Dindigul 624 001. ... Appellant /2nd Respondent

Vs.

1.Vijayakumar, ... 1st Respondent/ Petitioner
2.S.Stalin, ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 27.10.2015, made in M.C.O.P.No.1171 of 2005, on the file of the Motor Accident Claims Tribunal - III Additional Sub Court, Trichy.

For Appellant	: Mr.A.S.Mathialagan
For Respondents	: Mr.J.Anand Kumar for R1
	: No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 27.10.2015, made in M.C.O.P.No.1171 of 2005, on the file of the Motor Accident Claims Tribunal - III Additional Sub Court, Trichy. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition in M.C.O.P.No.1171 of 2005, is as follows:

On 22.05.2004, at about 07.00 am., when the petitioner was travelling as a sales assistant for selling milk products in a tempo van, bearing Registration No. TN-57-F-9992, the driver of the vehicle drove the vehicle in a rash and negligent manner, dashed against the road side tamarind tree. The petitioner sustained injuries and he claimed a sum of Rs.3,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent in M.C.O.P.No.1171 of 2005, is as follows:

The petitioner travelled in the vehicle only as a gratuitous passenger. No premium was paid for a sales assistant. The petitioner has to prove his age, avocation, income, nature of injuries and mode of treatment. The claim is excessive.

4. 2 witnesses were examined and 7 documents were marked, on the side of the claimant. 1 witness was examined and 3 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.2,00,960/- as compensation.

5. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in fastening the entire liability on the appellant. The Tribunal failed to consider the F.I.R and the evidence of P.W.1, which clearly reveals that the claimant had travelled only as a salesman, who was not covered under the Insurance Policy. The Tribunal failed to consider the evidence of R.W.1 and failed to note the statutory requirement of IMT 37 terms and conditions of policy, additional premium ought to have been paid for the sales man. The policy covered only the owner of the goods, driver, cleaner and loadman, but, not a sales man. The award is excessive.

6. On the side of the appellant, it is stated that the claimant was only a sales man, the vehicle was in the name of one Stalin and not in the name of heritage foods. The claimant was working in heritage food company. No document was filed

to prove connection between the vehicle and the heritage food company. The claimant is only a gratuitous passenger, who travelled in a goods vehicle and that he cannot claim any compensation. He was not the owner of the goods or the agent of the owner of the goods. A case in W.C.No.290 of 2009 was filed before the Deputy Commissioner of Labour, Trichy, but, since the claimant could not establish employer and employee relationship, he withdrew the petition. R.W.2 has deposed regarding the nature of policy. Under Section 147 of M.V. Act, there is no coverage for a gratuitous passenger. There is coverage for 1 person, under the W.C. Act, but, the claimant is not a workmen of the first respondent. Trip sheets, bill, invoice were not marked. There was no document to prove that to whom the goods were transported at that time.

7. On the side of the claimant, it is stated that the appellant has not raised any such plea in the counter filed before the Tribunal. Any evidence without pleadings, is inadmissible. The policy was effective. Copy of R.C was marked. 3 Persons apart from the driver can travel in the vehicle. The accident has happened during the usage of the vehicle, extra premium was paid for 3 passengers/employees, the appellant cannot question the liability.

8. On the side of the claimant, a judgment of this Court reported in 2014-2-TNMAC-79 (Royal Sundaram Alliance Insurance Co. Ltd., V. D.Gunasekaran), is cited, wherein, it is stated as follows:-

> *"As per IMT.37, a coverage applicable to owner of goods and any number of owner of goods can travel in vehicle. However, the Insurer contending that premium of Rs.75/- collected only for one passenger, therefore, liability of insurer would cover only one passenger is not tenable. Premium of Rs.75/- paid as per IMT.37-A for covering liability in respect of non-fare paying passengers and not "owner of goods" " owner of goods or his representative" statutorily covered under Act Policy. Section 147 (1)(b) & (c) gives statutory protection to insured in case of goods vehicle."*

9. On the side of the appellant, it is stated that employee of a hired vehicle are not covered by the policy, only load man are covered and not the sales man.

10. Copy of the F.I.R was marked as Ex.P1. On the basis of the evidence of P.W.1 and on the basis of Ex.P1,the Tribunal fixed the responsibility on the van driver, which is reasonable.

11. The vehicle was insured with the appellant. The policy copy was marked as Ex.R1. R.W.1 and R.W.2 have deposed that a salesman was not covered under the policy. Ex.R2 was the copy of the Registration Certificate, wherein, it is stated that 3 persons, apart from the driver can travel in the vehicle. The policy is effective. Though named as a salesman, the claimant was travelling in the vehicle as the agent of the owner of the goods. He was authorised by the owner of the goods, to travel with the goods. Hence, the contention of the appellant that the claimant was not the agent of the owner of the goods is not sustainable. Hence, it is decided that the appellant is liable to pay compensation.

12. Discharge summary issued by the Thanjavur Medical College Hospital was marked as Ex.P2. Discharge summary issued by P.K. Hospital was marked as Ex.P3. Medical bill was marked as Ex.P4. Photos and CD were marked as Ex.P5. Wound certificate was marked as Ex.P6. X-Ray was marked as Ex.P7. P.W.2 gave evidence regarding the disability. P.W.2 assessed the disability at 48%. The Tribunal fixed the disability as 45% and awarded Rs.3,000/- per percentage of disability and awarded Rs.1,35,000/-, which is reasonable.

13. The Tribunal awarded Rs.6,000/- towards attender charges, Rs.9,000/- towards temporary loss of income for the period of rehabilitation, which are all

reasonable. The Tribunal awarded Rs.30,000/- towards pain and sufferings, Rs.8,460/- towards medical expenses, Rs.7,500/- towards extra nourishment and Rs.5,000/- towards transport expenses, which are all reasonable.

14. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. This Appeal is dismissed and the order of the Tribunal is hereby confirmed. No costs.

(i)The quantum of compensation awarded by the Tribunal is confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 2,00,960/- (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.

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount along with 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.

23.12.2022

Index : Yes/No
Internet : Yes/No
Ls

R. THARANI, J.

Ls

To

1.The III Additional Sub Judge,
Motor Accident Claims Tribunal,
Trichy.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1105 of 2018

23.12.2022