IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3670 of 2013
and
M.P. Nos.1 of 2013

Branch Manager,
United India Insurance Company Ltd.,
Tirupattur. ... Appellant

Vs.

1. Sathiyaraj S/o. Subramani
2. R. Gangappan S/o. Raman ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.06.2013 made in O.P. No.801 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Tirupattur.

For Appellant : Mr.D. Bhaskaran
For Respondents : No Appearance.

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company herein against the Judgment and decree dated 25.06.2013 made in O.P. No.801 of 2013 on the file of the Motor Accidents

Claims Tribunal / Special Subordinate Judge, Tirupattur questioning the liability as well as the quantum.

2. The claim petition was filed under Section 166 of Motor Vehicle Act, 1988 by the injured person claiming compensation of Rs.5,00,000/- for the injury, occurred due to the road accident that occurred on 11.07.2009.

3. Despite the receipt of notice, both the respondents remained absent.

4. The Tribunal, after hearing the arguments on both sides and upon considering the oral and documentary evidence, granted compensation of Rs.43,000/- with interest @ 7.5% per annum from the date of filing of petition till the date of deposit holding the 2nd respondent / Insurance Company liable.

5. The learned counsel appearing for the Insurance Company would strenuously contend that as per Ex.R.1 / Ex.P.5, Registration Certificate, the seating capacity including the driver is 3 and as the policy is 'Act only Policy' (Ex.P.2 / Ex.R.1) and as he was a workman, he is entitled for compensation only under The Workmen's Compensation Act.

6. To strengthen his arguments, the following judgments were referred to:-

6(i) ***National Insurance Company Ltd., vs. Prembai Patel and others reported in 2005 ACJ 1323***.

The deceased, aged about 35 years, was employed by the owner of the truck as a driver. The truck, while carrying a heavy load of firewood overturned and resulted in death of its driver. On a claim petition filed by the legal heirs of the deceased under Section 166 of the Motor Vehicles Act, 1988, the Tribunal held that the deceased Sunder Singh himself is responsible for the accident and accordingly, dismissed the claim petition. Aggrieved which, the claimants preferred an appeal before the High Court and it was held that the accident took place due to the fact that the arm bolt of the truck broke down and not on account of any negligence on the part of the driver of the truck. Taking into account the age, salary of the deceased, an amount of Rs.2,10,000/- was awarded as compensation, passing the liability on the insurance company to satisfy the entire award. This judgment of the High Court was sought to be challenged by the appellant insurance company on sole ground that having regard to the insurance *policy taken by the owner of the vehicle and provisions of Sections 147 and 149 of the Act, its liability is restricted to that, which is provided under The Workmen's Compensation Act, 1923 and it is not liable to to satisfy the entire award made in favour of the claimants. According to the insurance company, the insured has paid only that much amount of premium as was required to cover the liability under the Workmen's Act. He had not paid such premium so as to cover the entire amount of liability qua an employee and, therefore, the liability of the appellant would be a restricted one and it would not be to satisfy the entire award made in favour of the claimants. Per contra, on the side of respondents, it was submitted that the truck was comprehensively insured and, therefore, the insurance company is liable to satisfy the entire award made in favour of the claimants and the view taken by the High Court is perfectly correct*.

The Apex Court further held that:

A person, who has sustained injury or where death has resulted from an accident all or any of the legal representatives of the deceased can claim compensation by *moving an application under Section 166 of the Act by filing a claim petition before the Motor Accident Claims Tribunal. Section 3 of the Workmen's Compensation Act lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under the Act and also under the Workmen's Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. The claim petition had been filed by respondents 3 to 6 claiming compensation for the death of Sunder Singh, who was an employee of respondent No.2, in an accident arising out of and in the course of his employment. Therefore, they could claim compensation under either of the Acts. But they chose the forum provided under the Motor Vehicles Act..... But the claim petition before the Motor Accident Claim Tribunal is* *an action in tort and the injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or deceased and they were not responsible for the accident. The exception to this general rule is given in Section 140 of the Act where the legislature has specifically made provisions for payment of compensation on the principle of no fault liability".*

The Hon'ble Apex Court held that

"....the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy, the liability of the appellant would be restricted to that arising under The Workmen's Compensation Act. The judgment of the High Court needs to be modified accordingly".

6(ii) ***The Divisional Manager, The New India Assurance Company Limited, Vellore vs. M. Jayanthi and others reported in 2012 (2) TN MAC 41.***

7. Heard Mr. P. Bhaskaran, the learned counsel appearing for the appellant and perused the entire materials available on record.

8. At trial, one Mr. Sathiyaraj has been examined as PW1. Ex.P1 to Ex.P.4 were marked. On the side of Insurance Company, a Staff of said company, Tr. Kumar was examined as RW1. Copy of the insurance policy, the investigator's report and the High Court's Stay order are Ex.R1, Ex.R2 and Ex.R.3 respectively.

9. It is the evidence of PW1, that on 11.07.2009, he along with the deceased Annamalai and others, were sitting in the lorry to unload the sand and when the lorry was proceeding along Kakkangarai Road, he saw a lorry just coming in a high speed and their lorry driver suddenly applied brake and some of them fell from the lorry and all of them sustained injuries except Annamalai. It was made clear that they were working as load men at the relevant point of time.

10. The law is settled to the effect that if the claimant or the deceased happen to be a workman and if the policy is an "Act liability" policy, the liability of the appellant would be restricted to that arising under The Workmen's Compensation Act. The Hon'ble Supreme Court held that the judgment of the High Court in so far as it relates to the quantum of compensation and interest, which is to be paid to the claimant, is affirmed. The Hon'ble Supreme Court has held as follows:-

"16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accident Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant insurance company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy, the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants (respondent Nos.3 to 6 herein) is affirmed. The liability of the appellant insurance company to satisfy the award would be restricted to that arising under the Workmen's Act. The respondent Nos.1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award".

Therefore, as the 1st respondent / injured, who was working as a Coolie and met with an accident and got injury, had preferred a Claim petition under Section 166 of Motor Vehicles Act, 1988 claiming compensation for his injury. Ex.P.2 / Ex.R1 is the copy of the insurance policy. It is a "Liability only Policy". On the side of the insurance company, a Staff of insurance company was examined as RW1. It is the evidence of RW1 that as per the terms of the policy, premium is paid for the driver, cleaner and for 5 coolies. On perusal of Ex.R.1 policy, it is seen that premium has been collected for 5 workmen. Further more, a careful perusal of Ex.R1 policy reveals that as per the terms of the policy, the liability is Rs.7,50,000/-. Hence, the contention of the insurance company that the respondents are not covered under policy is totally unsustainable.

10. Considering the fact that a very meager amount was ordered to be paid and based on the above observations of the Hon'ble Supreme Court, the compensation granted by the learned Tribunal is confirmed.

11. Accordingly, the 1st respondent is entitled to the entire compensation amount of Rs.43,000/- awarded by the Tribunal with interest at 7.5% per annum from the date of numbering of the petition i.e.30.10.2009 to till the date of realisation.

12. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The compensation awarded by the Tribunal under the following heads is **confirmed:**

1) Pain and suffering	**:**	**Rs.25,000/-**
2) Loss of Earning	**:**	**Rs.13,500/-**
3) Extra Nourishment	**:**	**Rs.3,000/-**
4) Transportation	**:**	**Rs.1,500/-**
	Total :	**Rs.43,000/-**

(iii) The 2nd respondent / Insurance Company is directed to deposit the compensation amount i.e.,**Rs.43,000/-** together with interest at 7.5% per annum from the date of numbering of the petition i.e. 30.10.2009 to till the date of realisation in M.C.A.T. O.P.No.151 of 2011 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 1st respondent is at liberty to withdraw the same on filing of cheque petition. The Tribunal below shall disburse the entire amount upon production of the certified copy showing proof of payment of Court fee by the appellant.

29.09.2023

Index : Yes/No
Speaking / Non-speaking order
mjs

To:

1. The Motor Accident Claims Tribunal
(Special Subordinate Judge), Tirupattur.

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

R.KALAIMATHI, J.,
mjs

C.M.A.No.3670 of 2013

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