IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos. 1567 and 1976 of 2018

R.Kanmani ... Appellant
in C.M.A.No.1567 of 2018

R.Tamilselvi ... Appellant
in C.M.A.No.1976 of 2018

Vs.

1.Udayakumar

2.United India Insurance Company Ltd.,
No.104-A, Peramanoor Main Road,
Peramanoor, Salem – 636 007.

3.J.Nandhini ... Respondents
in both C.M.As

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act to enhance the compensation amount and fix the liability on the 2nd respondent made in judgment and decree dated 02.11.2016 made in M.C.O.P.Nos.501 of 2007 and 532 of 2007 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellants : Mr.S.P.Yuaraj
[in both C.M.As]

For Respondents : No appearance
for R1 [in both C.M.As]

Ms.I Malar
for R2 [in both C.M.As]

R3-not residing in the address
[in both C.M.As]

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the Award and decree dated 02.11.2016 passed in M.C.O.P.Nos.501 and 532 of 2007, respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking, before the Tribunal.

3. The brief facts of the case are as follows:

(i) On 03.02.2006 at about 11.00 p.m the claimant in

M.C.O.P.No.501 of 2007 and the claimant in M.C.O.P.No.532 of 2007 and two others viz., A.Chinnasamy and Mariappan were travelling in Omni Van bearing Registration No.TN 02/D 3073 from Attur to Chennai Main Road. When they were nearing Chengalpattu to Kancheepuram Main Road at about 5.00 a.m., i.e. on 04.02.2006, the first respondent, who is the driver-cum-owner, who drove the said Omni van, had suddenly applied break to prevent dashing of the Omni van with the buffalo. Unfortunately, he dashed against an Iron Post KM 56 and D.30 RH & G.S and Salai Chennai. Due to the said impact, the claimants and others sustained grievous injuries.

(ii) Seeking compensation against the owner of the Van and its insurer M/s.United India Insurance Company Limited, the claimant R.Kanmani filed M.C.O.P.No.501 of 2007, claiming compensation of Rs.15,00,000/-, and the claimant R.Tamilselvi filed M.C.O.P.No.532 of 2007, claiming compensation of Rs.10,00,000/-.

4. The said claim was resisted by the Insurance Company by filing a counter statement denying the date, time, place and avocation of the claimants. They also denied the manner of the accident as stated by the claimants in the claim petitions. Thus, they sought for dismissal of the claim

petitions.

5. In order to prove the claim before the Tribunal, on the side of the claimants P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P13 were marked. On the side of the second respondent/Insurance Company, R.W.1 was examined and Ex.R1 was marked and also marked Ex.X1 to Ex.X3.

6. The Tribunal, after considering the entire oral and documentary evidence available on record, awarded a sum of Rs.12,88,000/- to the claimant in M.C.O.P.No.501 of 2007 and awarded a sum of Rs.1,38,500/- to the claimant in M.C.O.P.No.532 of 2007 and the first respondent/owner of the van was directed to deposit the compensation amount. The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In M.C.O.P.No.501 of 2007

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Loss of future Income	6,72,000
2.	Pain and Sufferings	50,000
3.	Medical Expenses	2,85,300
4.	Loss of Amenities and	50,000

S. No.	*Heads under which the amount is awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*
	enjoyment of life	
5.	Permanent disability	1,00,000
6.	Loss of income during the treatment period	80,000
7.	Extra Nourishment	15,000
8.	Attender charges	25,000
9.	Transportation	10,000
10.	Damages Clothes	700
	Total	12,88,000

(i) In M.C.O.P.No.532 of 2007

S. No.	*Heads under which the amount is awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*
1.	20% permanent disability	60,000
2.	Pain and Sufferings	20,000
3.	Loss of Amenities and enjoyment of life	20,000
4.	Medical Expenses	22,900
5.	Extra Nourishment	5,000
6.	Attender charges	5,000
7.	Transportation	5,000
8.	Damages Clothes	600
	Total	1,38,500

7. Challenging the liability and quantum of compensation awarded by the Tribunal, the claimants have preferred the present appeals.

8. The learned counsel for the appellants/claimants submitted that the claimants are the occupants of the van and the accident had occurred only due to rash and negligent driving of the driver-cum-owner of the Omni Van bearing Registration No.TN 02 D 3073, and hence, its insurer, the second respondent/Insurance Company is liable to pay the compensation. However, the Tribunal failed to fix the liability on the second respondent, fixed the liability on the first respondent/driver-cum-owner of the van. In case, if any violation of policy conditions, the second respondent/Insurance Company may pay the compensation amount at first instant and thereafter, recover from the owner of the vehicle, the claimants should not suffered for violation of the policy conditions. The Tribunal failed to consider the fact that there is policy coverage for the offending van at the time of accident, and the said policy covers for third parties. The claimants, who are the occupant of the Van are third parties, and hence, the Insurance Company is liable to pay compensation for them and thereafter, recover

from the owner. Thus, he prays to grant "pay and recovery" right. He further submitted that the claimants cannot continue their job freely because of the injuries sustained by them, due to the accident and hence, compensation awarded by the Tribunal may be enhanced.

9. The learned counsel appearing for the second respondent/Insurance Company submitted that it is an 'Act Policy' and therefore, there is no coverage with reference to the occupants, who had travelled in the insured vehicle. Admittedly, the insured vehicle is a Omni Van and the claimants were travelling in the said van as occupants, which met with an accident due to the rash and negligent driver of the driver. The claimants are the occupants of the said Van, they are not third parties and there is no coverage for the occupants. Further, the owner of the van has not paid any extra premium for other than the third parties. Hence, the Tribunal has rightly held that the owner of the vehicle is liable to pay compensation and exonerated the Insurance Company from the liability.

10. Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

11. The accident is admitted. The offending vehicle was involved in the accident is also admitted. The offending vehicle was insured with the second respondent/Insurance Company is and the policy is the 'Act Policy' is not in dispute. The claimants are the occupants of the van is also not in dispute. Now, the only dispute now raised before this Court is as to whether the policy covers for other than the third parties or not.

12. On a perusal of the entire materials available on record, including the oral and documentary evidence, as the first appellate Court and this Court being the final fact finding Court, has to re-appreciate the entire evidence and give independent finding and also to see as to whether the Tribunal has rightly appreciated the evidence and fixed the liability on the owner of the van, or it requires to be modified.

13. A careful reading of Ex.R1/copy of the policy clearly shows that the policy is an 'Act Policy' and it is only liable to indemnify the loss caused to the third parties. In the case on hand, the claimants are the occupants of the van, at the time of accident and hence, the policy does not covers for them. Therefore, the Tribunal has rightly held that the driver, who

drove the Omni Van bearing Registration No.TN 02 D 3073 in a rash and negligent manner is only responsible for the accident and hence, the owner of the van is liable to pay compensation. Since there is no insurance coverage for other than the third parties, the Insurance Company is not liable to pay compensation.

14. Considering the entire materials and facts and also considering the submissions made by the learned counsel on either side, this Court finds that the Tribunal has rightly fixed the liability on the owner of the offending vehicle and also Award passed by the Tribunal by granting compensation is just and fair, this Court does not find any perversity in appreciation of the evidence. Therefore, there is no reason and the ground to fix liability on the Insurance Company and to enhance the compensation.

15. There is no merit in the present appeals, which are accordingly dismissed, confirming the impugned Award passed by the Tribunal. There shall be no order as to costs in the present appeal.

16. The first respondent/owner-cum-driver of the van is directed to deposit the entire compensation as awarded by the Tribunal to the credit of M.C.O.P.Nos.501 of 2007 and 532 of 2007, respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by him before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). On such deposit, the claimants are permitted to withdraw the amount of compensation in the ratio mentioned by the Tribunal, after adjusting the amount, if any already withdrawn.

13.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

1. The Special Sub Judge-I
   Motor Accidents Claims Tribunal,
   Salem.

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

P.VELMURUGAN, J.

ms

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