



C.M.A.No.706 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.706 of 2021

and

C.M.P.No.4247 of 2021

M/s.United India Insurance Co.Ltd.,
Pudhuchamapalli, Mettur Dam,
Mettur Taluk, Salem District.
Appellant

...

Vs.

1. C.Ramagopal
2. G.Sundar
(2nd respondent exparte before the lower Court
Hence notice may be dispensed with)

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2019 made in M.C.O.P.No.98 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Mettur.

For Appellant : Mr.E.Rajadurai for
M/s.M.B.Gopalan Associates

For Respondents : Mrs.Saraswathi Muthiah for R1

No Appearance [R2]



C.M.A.No.706 of 2021

JUDGEMENT

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The Civil Miscellaneous Appeal has been filed against the judgment and decree dated 30.10.2019 made in M.C.O.P.No.98 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Mettur.

2. It is the case of the claimant that on 21.06.2011 when the claimant along with his father and mother were travelling in a car bearing Registration No.TN 72 R 1111, at that time a car which came in the opposite direction tried to overtake a lorry in a rash and negligent manner and hit the car driven by the claimant's father, due to which the claimant, his father and his mother sustained grievous injuries. Thereby, the present claim petition has been filed by the claimant seeking compensation in a sum of Rs.5,00,000/-.

3. Before the Tribunal, the claimant examined himself as .P.W.1 and marked Exs.P.1 to Ex.P.10. The respondents examined R.W.1 and R.W.2 and marked Exs.R1 and R2. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.1,99,727/- as compensation to the claimant. Aggrieved over the same, the appellant/insurance company is before this Court.



4. The learned counsel appearing for the appellant submits that the

Tribunal has erroneously referred IMT 29 clause and held that the appellant is liable to pay the compensation, whereas the Tribunal lost sight of the fact that IMT 29 covered only employees whereas claimant was the student and was the son of the owner travelling with his parents in the car. Therefore, he cannot be covered under IMT 29. Moreover, when the policy is act only policy therefore the award passed by the Tribunal deserves to be set aside.

5. On the above said contention heard the learned counsel for the first respondent.

6. Though notice was served on second respondent no one appeared on his behalf. Considering the period of pendency of the appeal the same is disposed of based on the materials available on record.

7. The accident is not disputed and so, the compensation arrived is not disputed. The appellant challenges the said award only on the basis of the application of IMT 29 based on which the compensation has been determined to be paid with reference to the policy being an act only policy. In this regard a



C.M.A.No.706 of 2021

careful perusal of IMT 29 reveals that it is a coverage with regard to legal liability to the employees of the insured other than paid driver and / or conductor and / or cleaner who may be driving in the employer's car.

8. In the case on hand the injured claimant is the son of the owner of the vehicle, he would not fall within the legal ambit of IMT 29 as he cannot be construed to be an employee under his employer. Further, the premium paid for the purpose of giving compensation is only with regard to the employees and it will not take within its wide sweep any persons travelling in the car. In the case on hand as aforesaid the claimant being the son of the owner of the vehicle cannot be construed as an employee and would not be entitled for compensation under IMT 29.

9. Even otherwise, it is seen from the materials available on record that the vehicle is covered under act only policy which does not cover the occupants of the car in the absence of payment of any additional premium. In the case on hand no additional premium has been paid for covering the occupants of the car. Such being the case, the compensation awarded by the



C.M.A.No.706 of 2021

Tribunal on the basis of the policy is wholly erroneous and perverse and the same requires to be set aside.

10. This civil miscellaneous appeal is allowed with the above terms.

No costs. Consequently connected miscellaneous petition is closed.

20.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accidents Claims Tribunal, Sub Court, Mettur.

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



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C.M.A.No.706 of 2021

M.DHANDAPANI,J

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C.M.A.No.706 of 2021

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