IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos. 3139 and 3140 of 2018
and
C.M.P.Nos.23819 and 23821 of 2018

C.M.A.No.3139 of 2018

United India Insurance Co., Ltd.,
No.5, Periyakadai Veedhi,
Dharapuram. ... Appellant

Vs.

1.R.Naachimuthu
2.K.R.Ravindran
3.M.Eswaramurthy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Award and decree dated 12.01.2018 made in M.C.O.P.No.963 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Dharapuram.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : No appearance

C.M.A.No.3140 of 2018

United India Insurance Co., Ltd.,
No.5, Periyakadai Veedhi,
Dharapuram. ... Appellant

Vs.

1.R.Rani
2.K.R.Ravindran
3.M.Eswaramurthy ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Award and decree dated 12.01.2018 made in M.C.O.P.No.965 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Dharapuram.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : No appearance

COMMON JUDGMENT

The United India Insurance Company Limited is the appellant before this Court. The common Award and decree passed in M.C.O.P.Nos.963 and 965 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Dharapuram, are under challenge in the present appeals.

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

3.The facts in a nutshell are as follows :

(i) On 19.06.2012 at about 3.45 a.m., the claimants were returning from Rameshwaram Kovil to their house by a Maruthi Car bearing Registration No.TN.37-AL-9353. When they were nearing Suriyavaradha Mill on Dharapuram to Ottanchathiram Road from East to West direction, the driver drove the said Car in a rash and negligent manner, dashed against a Tamarind tree. Due to the said impact, the claimants sustained grievous injuries.

(ii) Seeking compensation against the owner and driver of the Car and its insurer M/s.United India Insurance Company Limited, the claimant R.Naachimuthu filed M.C.O.P.No.963 of 2012, claiming a compensation of Rs.10,00,000/-, and the claimant R.Rani filed M.C.O.P.No.965 of 2012, claiming a compensation of Rs.5,00,000/-.

4. The first respondent, who is driver of the Car and the second respondent, who is the owner of the Car remained *ex-parte* before the Tribunal.

5. The claim petitions were resisted by the appellant/Insurance Company by filing counter statements denying the manner of the accident as projected by the claimants in the claim petitions. They also denied the avocation and income mentioned in the claim petitions. Thus, they sought for dismissal of the claim petitions.

6. To substantiate the case on the side of the claimants, the claimants examined themselves as P.W.1 and P.W.2 and Ex.P1 to Ex.P18 were marked. On the side of the Insurance Company, R.W.1 was examined and Ex.R1 was marked. The Court documents were marked as Ex.X1 and Ex.X2.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Car bearing Registration No.TN.37-AL-9353.

By coming to such conclusion, the Tribunal passed an award for a sum of **Rs.4,59,088/-** in M.C.O.P.No.963 of 2012 and awarded a sum of **Rs.30,211/-** in M.C.O.P.No.965 of 2012 and directed respondents 1 to 3 before the Tribunal to jointly and severally pay 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.963 of 2012

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Loss of Disability	90,000
2.	Loss of Income	15,000
3.	Extra Nourishment	3,000
4.	Attender charges	5,000
5.	Loss of pain and suffering	30,000
6.	Medical Bills	3,12,088
7.	Transport Expenses	4,000
	Total	**4,59,088**

(i) In M.C.O.P.No.965 of 2012

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***
1.	Loss of Disability	7,500
2.	Loss of Income	2,500
3.	Extra Nourishment	2,000
4.	Attender charges	500
5.	Loss of pain and suffering	5,000
6.	Medical Bills	8,711
7.	Transport Expenses	4,000
	Total	**30,211**

8. Challenging the liability and quantum fixed by the Tribunal, the Insurance Company has preferred these appeals.

9. The learned counsel for the appellant/Insurance Company submitted that the claimants travelled as occupants of the Car bearing Registration No.TN.37-AL-9353 and it met with an accident. The said Car was insured with the appellant/Insurance Company. The policy is an "Act Policy" and it covers only the driver, owner of the Car and with regard to the third party, no additional premium has been collected under any heads to cover the risk of the occupants. Therefore, there is no coverage with

reference to the passengers/occupants, who were travelling in the insured vehicle. During trial, the claimants/P.W.1 and P.W.2 themselves admitted that they travelled as occupants of the said Car. In an "Act policy" liability of the Insurance Company cannot be fixed, however, the Tribunal failed to appreciate the entire evidence and fixed the liability on the appellant/Insurance Company, which warrants interference by this Court.

10. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

11. Despite service of notice, there is no representation for the respondents/claimants either in person or through counsel.

12. The claimants themselves examined as P.W.1 and P.W.2 and they clearly stated that they travelled along with the owner of the Car, who is their relative, at the relevant point of time. On the side of the appellant/Insurance Company, one of the officers of the Insurance Company

was examined as R.W.1 and he clearly stated that the "Act policy" covers only the driver, owner and the third party risk of the vehicle, but it does not cover the occupants of the Car and the policy/Ex.R1 was marked as a document before the Tribunal.

13. This Court as a final Court of fact finding re-appreciated the entire evidence and finds that the claimants are the occupants of the car and they cannot be termed as third party, and hence, the said policy does not cover them. No extra or additional premium was paid by the owner of the car for other than the third parties. It is settled principle that the admitted fact need not be proved and the admission is the best piece of evidence. In the case on hand, the claimants themselves admitted that they have travelled as the occupants of the said car and there is no necessity to prove the same.

14. This Court is of the considered opinion that in an "Act policy" liability on the Insurance Company cannot be fixed. The Policy being a contract, the terms and conditions are binding on the parties, since the claimants travelled in the insured car as the occupants, which met with an accident, there is no reason to fix liability against the Insurance Company. In all such cases, the owner may be held liable and contrarily, as

per the terms and conditions of the "Act policy", the Insurance Company cannot be held liable. Thus, the Tribunal committed an error in granting compensation in favour of the claimants by directing the Insurance Company to pay the same. Therefore, the appellant/Insurance Company is liable to be exonerated from the liability and they are not liable to pay compensation. Thus, the claimants are entitled to get compensation from the owner of the Car bearing Registration No.TN.37-AL-9353.

15. The quantum of compensation awarded by the Tribunal is 'just' and 'fair' and hence, the same is confirmed in these appeals.

16. Accordingly, the second respondent before the Tribunal/owner of the car is directed to deposit the total compensation of **Rs.4,59,088/-** in M.C.O.P.No.963 of 2012 and also a sum of **Rs.30,211/-** in M.C.O.P.No.965 of 2012 along with interest at 7.5% per annum and costs before the Tribunal, after adjusting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the amount, after adjusting the amount, already withdrawn, if any. The

Insurance Company is permitted to withdraw the amount, if any, already deposited before the Tribunal.

17. In the light of the above modification, these Civil Miscellaneous Appeals are partly allowed and the impugned Award and decree passed by the Tribunal in M.C.O.P.Nos.963 and 965 of 2012, are hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.09.2023

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

1.The Motor Accidents Claims Tribunal,
(Subordinate Court),
Dharapuram.

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