IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4141 of 2019
And
C.M.P.No.23402 of 2019

The Branch Manager
United India Insurance Co. Ltd.,
28, Meenakshi Complex, Mailam Road,
Tindivanam. ... Appellant

Vs.

1.Dhakshinamoorthy
2.Sathishkumar ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 14.02.2017 made in M.C.O.P.No.91 of 2014 on the file of the Motor Accidents Claims Tribunal, (Principal Sub Court), Tindivanam.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.G.Mohammed Aseef for R1
R2 – NRN

J U D G M E N T

The second respondent Insurance Company before the Motor

Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 14.02.2017 passed by the Motor Accidents Claims Tribunal (Principal Sub Court), Tindivanam, in M.C.O.P.No.91 of 2014.

2.The brief facts of the case is that on 12.01.2014, at about 17.00 hours, the first respondent travelled as a Cleaner in the lorry owned by the second respondent and insured with the appellant and when the vehicle was nearing Sokkanthangal Erikarai near burial way, the driver of the vehicle drove the vehicle in a rash and negligent manner and in a zig zag manner, due to which, the first respondent fell down from the lorry and sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.50 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.19,59,050/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed the appellant Insurance Company to deposit the compensation amount. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the liability. The learned counsel further submitted that the first respondent is not a third party in terms of Section 166 of the Motor Vehicles Act and he is an employee of the second respondent. Due to the rash and negligent driving of the driver of the vehicle, the first respondent sustained injuries. The first respondent himself is a tort feasor and on his own negligence, the first respondent fell down from the lorry and sustained injuries. Unless the first respondent establish that due to the rash and negligent driving of the driver of the vehicle insured with the appellant, the accident occurred, the appellant is not liable to pay compensation to the first respondent. The learned counsel further submitted that the remedy available to the first respondent claimant is to approach the Workmen Compensation Court.

5.The learned counsel appearing for the appellant further submitted that the policy is an Act I policy, in which, only third party alone is entitled to claim compensation as against the Insurance Company. The first respondent is an employee of the second respondent and is not a third party. Hence, the claim petition filed under Section 166 of the Motor Vehicles Act is not sustainable one.

6.The learned counsel appearing for the appellant further submitted that the very same issue was considered by the Hon'ble Apex Court in the decision reported in *(2005) 6 SCC 172 [National Insurance Co. Ltd., Vs. Prembai Patel and others]*, wherein, the Hon'ble Apex Court 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 learned counsel further submitted that in view of the above decision the first respondent can very well approach the Workmen Compensation Court.

7.Per contra, the learned counsel appearing for the first respondent submitted that the first respondent claimant is an employee of the second respondent who is the owner of the lorry insured with the appellant. On the fateful day, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which, the the first respondent fell down from the lorry and sustained injuries.

8.The learned counsel appearing for the first respondent further submitted that inorder to substantiate the case, the first respondent examined himself as P.W.1 and also examined the Doctor who gave him treatment as P.W.2. Ex.P.1 – copy of the F.I.R. makes it clear that due to the negligence on the part of the driver of the lorry, the accident happened, for which, the first respondent is entitled to file claim petition either under the Motor Vehicles Act or under the Workmen Compensation Act in terms of IMT.39 of the policy. The learned counsel further submitted that the decision relied upon by the learned counsel appearing for the appellant is not applicable to the present case on hand since the policy in the present case is not an Act policy and it is a liability only policy.

9.The learned counsel appearing for the first respondent further submitted that the policy is a liability only policy and the second respondent paid third party premium and perusal of the schedule of premium in the policy makes it clear that 'B.Basic – TP Rs.14,873/- compulsory PA for owner driver Rs.100/- LL to paid driver IMT 28 Rs.50/-' and IMT.39 of the policy makes it clear that 'legal liability to persons employed in connection with the operation and / or maintaining and / or loading and / or unloading of motor vehicles. In consideration of the payment of an additional premium of Rs.300/- it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading / or unloading but in any case not exceeding seven in number including driver and cleaner)'.

10.The learned counsel appearing for the first respondent further submitted that since the second respondent paid extra premium, as per IMT.39, the Insurance Company is liable to pay compensation under the Workmen's Compensation Act or at Common

Law in respect of personal injury to any paid driver or cleaner.

11.The learned counsel appearing for the first respondent further submitted that the Hon'ble Apex Court in the decision reported in *(2013) 12 SCC 84 [Ramachandra Vs. Regional Manager, United India Insurance Company Limited]*, has held that liability of the Insurance Company should not be restricted to one under Workmen Compensation Act but should be more or unlimited. Hence, the claim petition filed by the first respondent claimant is perfectly in order and the impugned order warrants no interference.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

13.The accident and the manner in which the accident happened are not disputed. Admittedly, the first respondent claimant is the employee of the second respondent who is the owner of the lorry insured with the appellant. On the fateful day, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which, the the first respondent fell down from the lorry and sustained injuries. The accident happened on 12.01.2014 and F.I.R. was registered on 20.01.2014. Mere delay in registering F.I.R. will not vitiate the case and charge sheet was not produced before the Tribunal.

14.The appellant has filed counter before the Tribunal stating that the policy is Act I policy, however, has filed C.M.P.No.23406 of 2019 before this Court seeking to receive policy copy of the vehicle and the said petition has been allowed by this Court on 13.04.2023. Perusal of the Policy copy makes it clear that the policy is Liability Only Policy and the premium details are as follows:

'SCHEDULE OF PREMIUM (IN Rs.)

B.Basic – TP	*Rs.14,873.00*
Total	*Rs.14,873.00*
Add:	
Compulsory PA for owner driver	*Rs.100.00*
LL to paid driver IMT 28	*Rs.50.00.*
Liability to Workmen greater than 6	*Rs.300.00*
Sub Total (Additions)	*Rs.450.00*
Gross TP(B)	*Rs.15,323.00*
Total Liability Premium	*Rs.15,323.00'*

15.For useful reference relevant portion of IMT.39 of the policy is also extracted hereunder:

> *'**IMT.39. Legal Liability to persons employed in connection with the operation and / or maintaining and / or loading and / or unloading of motor vehicles.***
> ***(For GOODS VEHICLE)***
>
> *In consideration of the payment of an additional premium of Rs.300/- it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the **Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law** in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading / or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the ... and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.'*

16.A perusal of the policy reveal that the second respondent has paid third party premium of Rs.14,873/- and IMT.39 makes it clear that in consideration of the payment of an additional premium of Rs.300/- the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act or at Common Law in respect of personal injury to any paid driver or cleaner and Motor Vehicles Act is Common Law in which the first respondent is entitled to raise claim petition.

17.As rightly pointed out by the the learned counsel appearing for the first respondent, the Hon'ble Apex Court in the decision reported in *(2013) 12 SCC 84 [Ramachandra Vs. Regional Manager, United India Insurance Company Limited]*, has held that if any extra premium is paid in the policy the Insurance Company is liable to pay compensation in respect of death or bodily injury and liability of the Insurance Company should not be restricted to one under Workmen Compensation Act but should be more or unlimited. Hence, the claim petition filed by the first respondent claimant and the compensation awarded by the Tribunal are perfectly in order and the impugned judgment warrants no interference.

18.The civil miscellaneous appeal is dismissed. The judgment and decree dated 14.02.2017 passed by the Motor Accidents Claims Tribunal, (Principal Sub Court), Tindivanam, in M.C.O.P.No.91 of 2014, is confirmed.

19.The appellant Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of six weeks copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimant/ first respondent is permitted to withdraw the award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

20.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal
(Principal Sub Court), Tindivanam.

M.DHANDAPANI,J.
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