IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2166 of 2019
and CMP.No.8871 of 2019

United India Insurance Co. Ltd.,
226, Canada Building,
Dr.D.N.Road, Fort, Mumbai. ...appellant

Vs.

1. Ilakkiyamathi
2. Minor Ilamughil
   Minor Rep. by his mother and next friend Ilakkiyamathi
3. Kuppammal
4. M/s.Mahindra & Mahindra Ltd.,
   (Motor Renewal) Automotive Sector,
   Gateway Building, Appollo Bunder,
   Mumbai.
5. N.Centrayan ...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.08.2018 in MCOP.No.444 of 2009 on the file of Motor Accident Claims Tribunal, IV Additional District Judge, Bhavani.

For Appellant : Mr.S.Arun Kumar
For Respondents
for RR1 to 3 & 5 : Mr.K.Varadha Kamaraj
for R4 : Served - No Appearance

JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

The sole ground on which the Insurance Company is on appeal is that the deceased travelled in his employer's vehicle as an employee and therefore, in the absence of payment of premium under IMT-29, the insurer cannot be made liable.

2. The Tribunal has concluded that the insurer would still be liable since the policy is a package policy treating the deceased as a third party. The fact that the deceased was an employee with the fourth respondent is not denied. The fact that the vehicle in question is owned by the fourth respondent is also not denied. The schedule to the policy has been produced as Ex.R1. A perusal of the schedule shows that the premium has been paid only for 2 categories viz., "Liability To Public-Basic" and "Legal Liability to Paid driver as per Endtt. 19".

3. It is therefore clear from the schedule that the policy does not cover an employee of the owner of the vehicle travelling in the vehicle. IMT-29, which provides for payment of premium for an employee separately, reads as follows:

> *"IMT-29: Legal Liability to Employees of the Insured other than paid Driver and/or Conductor and/or Cleaner, who may be travelling or driving in the Employer's Car (Private Cars only/Motorized Two-wheelers (not for hire or reward)"*

4. Once it is admitted that no premium has been paid under IMT-29 for the employees of the owner of the vehicle, who are travelling in the vehicle, the Insurance Company will not liable to indemnify the insured.

5. The owner of the vehicle, viz., the fourth respondent is not appearing despite service. Since the fourth respondent had contested the matter before the Tribunal, we required the counsel for the claimants to serve notice on the counsel, who appeared for the fourth respondent and also directed his name to be printed in the cause list. Despite such service and printing of the name, none appears for the fourth respondent. We therefore proceed to dispose of the appeal on merits.

6. The question as to whether the Insurance Company would be liable to indemnify the insured in cases where the employees of the insured travelled in the vehicle belonging to the insured and met with unfortunate accident. This question is no longer *res integra*. The Division Bench of this Court in ***United India Insurance Company Limited versus R.Krishnan*** reported in ***2020 (2) TN MAC 417 (DB)*** after exhaustive analysis of the provisions of the Motor Vehicles Act as well as the provisions of the Indian Motor Tariff Clauses, particularly with reference to Clause 16 and Clause 29, has held that the Insurance Company would not be liable to indemnify the insured in such cases. The Bench had also taken notice to the Insurance Regulatory and Development Authority of India (IRDAI) and heard its counsel before delivering the judgment on the issue. We do not think that there is any need for us to take a re-look into the said issue. We also find that an attempted appeal filed by the insured against the said judgment in SLP.No.7529 of 2020 was also rejected by the Hon'ble Supreme Court on 03.08.2022.

7. We are therefore constrained to allow this appeal to the limited extent of exonerating the Insurance Company from any liability. There will

be an award against the fourth respondent, who is the owner of the vehicle. The parties are directed to bear their own cost in the appeal. There will be a direction to the Tribunal to refund the entire amount deposited by the Insurance Company to the Insurance Company forthwith along with accrued interest if any.

8. Considering the fact that these cases of employees travelling in the private vehicles of the employers' met with an accident and got injured or faced untimely death, we see a need to direct the IRDAI to make coverage of these employees mandatory while issuing a private car policy for such vehicles. To make such coverage, payment of premium under IMT-29 compulsory as an inbuilt coverage.

9. In cases where such deaths or injuries are happened, even though the employer is made liable to pay the compensation, recovery of compensation from the employer becomes a nightmare for the claimants as they may not be possessed of means to satisfy such awards. This leads to the unfortunate claimants to suffer endlessly having lost their sole breadwinner or having suffered injuries. We therefore expect the IRDAI to act swiftly and implement the directions at the latest within a period of six months

from the date of receipt of a copy of this order. Accordingly, this appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

10. Registry is directed to forward a copy of this order to the Insurance Regulatory and Development Authority of India.

(R.S.M.J.,) (K.G.T.J.,)
24.02.2023

Index : No
Speaking order: Yes
pvs

To
1. IV Additional District Judge,
Motor Accident Claims Tribunal, Bhavani
2. The Section Officer,
VR Section High Court, Madras.

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

pvs

C.M.A.No.2166 of 2019

24.02.2023