BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.948 and 949 of 2015
and
M.P(MD) Nos.1 and 1 of 2015

C.M.A(MD) No.948 of 2015:

M/s.United India Insurance Company Ltd.,
Branch Office, Rowther Building,
Near to Pinagode Road Junction,
Main Road, Kalpetta,
Wayanad, Kerala State. ... Appellant/2nd Respondent

-vs-

1. Jinto T.Jacob ... 1st Respondent/Claimant
2. Varathi ... 2nd Respondent/1st Respondent
3. Manju ... 3rd Respondent/3rd Respondent
4. Sunil Mathew ... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree, dated 29.10.2013 made in M.C.O.P.No.298 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court), Trichy.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.K.P.Narayana Kumar
for R1 to R3
: No appearance – for R4

C.M.A(MD) No.949 of 2015:

M/s.United India Insurance Company Ltd.,
Branch Office, Rowther Building,
Near to Pinagode Road Junction,
Main Road, Kalpetta,
Wayanad, Kerala State. ... Appellant/2nd Respondent

-vs-

1. Chacko T.C,
2. Jinto T.Jacob
3. Sujai T.Jacob ... Respondents 1 to 3/Claimants
4. Varathi ... 4th Respondent/1st Respondent
5. Manju ... 5th Respondent/3rd Respondent
6. Sunil Mathew ... 6th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree, dated 29.10.2013 made in M.C.O.P.No.299 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court), Trichy.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.K.P.Narayana Kumar
for R1 to R3 and R5
: No appearance – for R4 and R6

COMMON JUDGMENT

C.M.A(MD) No. 948 of 2015 has been filed by the Insurance Company challenging the award passed by the the Motor Accident Claims Tribunal (Special District Court), Trichy, made in M.C.O.P.No.298 of 2013, arising out of the same accident.

2. According to the injured claimant, he was travelling in an occupant of a private Car owned by the first respondent and insured with the second respondent. The claimant has further contended that the driver of the said Car had driven in a rash and negligent manner and dashed against roadside stone, in which, the car had capsized and the petitioner got injured. The claimant sought for a sum of Rs.1,00,000/- (Rupees One Lakh only) as compensation.

3. C.M.A(MD) No. 949 of 2015 has been filed by the Insurance Company challenging the award passed by the the Motor Accidents Claims Tribunal (Special District Court), Trichy, made in M.C.O.P.No.299 of 2013 primarily on the ground of liability.

4. In the said petition, the claimants have contended that one of the occupants of the Car viz., Challi Chacko had passed away in the said accident, due to the rash and negligent driving on the part of the driver of the Car. They have claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards compensation.

5. The counter was filed by the Insurance Company contending that the policy of the Car is an Act Policy. The deceased and the injured claimant, being occupants of the Car, they are not covered by the said policy and hence, they are not liable to pay any compensation.

6. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Car. The Tribunal further found that the Insurance Policy is of the Car is only an Act Policy. Therefore, the Tribunal held that the Insurance Company shall pay the award amount and thereafter, recover from the owner of the Car. The said award is under challenge in the present appeals.

7. According to the learned counsel appearing for the appellant, admittedly, the deceased as well as the injured claimant were occupants of the private car. The car was driven in a rash and negligent manner by the said driver and it had dashed against the roadside stone and it got capsized. Therefore, no other offending vehicle was involved in the said accident. The Insurance Policy of the said Car has been marked as Ex.R1. As per the said policy it is Act only policy which does not cover the occupants of the car. When there is no coverage, the Tribunal ought not to have directed the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the car. Hence, he prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the respondents had contended that there is an Insurance Policy to the vehicle. Even as per admitted case of the Insurance Company the Car was owned by one Varathi. Therefore, the injured claimant and the deceased should be considered as third parties to the contract of the Insurance and therefore, they are entitled to receive compensation. He further pointed out that the Tribunal has not merely mulcted the liability upon the Insurance Company but has granted liberty to the Insurance Company to recover the same from the owner of the vehicle. Therefore, the said award of the Tribunal may not be disturbed.

9. I have carefully considered the submissions made by the learned counsel on either side.

10. A perusal of the Ex.R1, which is the Insurance Policy of the Car, clearly reveals that it is Act only Policy. It is settled position of law, the occupants of the Car are not covered by the Insurance Policy when it is an Act only Policy. When there is no coverage, the question of ordering pay and recovery will not arise only. When there is no coverage and there is breach of policy condition or statutory violation, the question of pay and recovery would not arise. Therefore, the Tribunal was not right in mulcting the liability upon the Insurance Company. Therefore, the appellant/Insurance Company is liable to be exonerated from the liability. However, this Court is not interfering in the quantum of the award or the apportionment made by the Tribunal in both the claim petitions. Therefore, the entire liability is fixed upon the first respondent in both the claim petitions viz., the owner of the Car to satisfy the award amount.

11. With the above said observation, both the Civil Miscellaneous Appeals stand partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal
(Special District Court), Trichy.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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