BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.713 to 715 of 2017

C.M.A(MD)No.713 of 2017:

The United India Insurance Company Ltd.,
Sudharson Buildings, II Floor,
Whites Road,
Chennai-14. ... Appellant/2nd Respondent

Vs.

1.Paravel ... Respondent/Petitioner

2.Thangamma Abraham ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 30.06.2016 passed in M.C.O.P.No.110 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Palani.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.D.Venkatesh

For R2 : No Appearance

C.M.A(MD)No.714 of 2017:

The United India Insurance Company Ltd.,
Sudharson Buildings, II Floor,
Whites Road,
Chennai-14. ... Appellant/2nd Respondent

Vs.

1.Chandrakumar ... Respondent/Petitioner

2.Thangamma Abraham ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 30.06.2016 passed in M.C.O.P.No.152 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Palani.

For Appellant : Mr.A.S.Mathialagan

For Respondents : No Appearance

C.M.A(MD)No.715 of 2017:

The United India Insurance Company Ltd.,
Sudharson Buildings, II Floor,
Whites Road,
Chennai-14. ... Appellant/2nd Respondent

Vs.

1.Veluchamy ... Respondent/Petitioner

2.Thangamma Abraham ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 30.06.2016 passed in M.C.O.P.No.154 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Palani.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.D.Venkatesh

For R2 : No Appearance

JUDGMENT

The appeals have been filed by the insurance company challenging the common award passed in 3 M.C.O.Ps on the file of Motor Accident Claims Tribunal, Palani challenging the liability.

2. According to the claimants, they have travelled in a Fiat Uno car to Kodaikanal on 24.12.2007 and while they were returning in Kodaikanal-Palani road, the driver of the vehicle had driven the vehicle in a rash and negligent manner and the vehicle got capsized at about 09.30 p.m. All the claimants have sustained grievous injuries. The claimant in M.C.O.P.No.110 of 2008 sought for a compensation of Rs. 25,000/-. The claimant in M.C.O.P.No.152 of 2008 prayed for a sum of Rs.2,00,000/- as compensation. The claimant in M.C.O.P.No.154 of 2008 prayed for a sum of Rs.3,00,000/- towards compensation.

3. The owner of the vehicle had remained ex parte and the insurance company had filed a counter disputing the manner of accident and also contending that the policy being an Act Policy, they are not

liable to pay any compensation to the occupants of the car for the injury sustained by them in the accident.

4. 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 of the driver Velliyangiri and therefore, as owner of the vehicle, 1st respondent was liable to pay the compensation. The tribunal further found that since Exhibit R.1 policy is an Act Policy, it directed the insurance company to satisfy the award and thereafter, recover the same from the owner of the vehicle. The tribunal had fixed the compensation of Rs.11,733/- for the claimant in M.C.O.P.No.110 of 2008, a sum of Rs.15,531/- was awarded for the claimant in M.C.O.P.No. 152 of 2008 and a sum of Rs.2,30,401/- was awarded for the claimant in M.C.O.P.No.154 of 2008. All the three awards are under challenge in the present appeals primarily on the ground of liability.

5. The learned counsel appearing for the appellant / insurance company had contended that a perusal of Exhibit R.1 insurance policy will clearly indicate that it is a Liability Only Policy and therefore, the claimants being occupants of the private car, they are not covered under the said policy. Only when there is a coverage and there is a breach of policy conditions, the question of pay and recovery would arise. On the

other hand, if there is no coverage at all, the question of pay and recovery would not arise. The learned counsel appearing for the appellant relied upon a judgments of our High Court reported in ***2017 (1) TN MAC 566 (National Insurance Co.Ltd., Vs. M.Padmini & Others)*** and Division Bench of our High Court in ***C.M.A.No.2163 of 2017 (S.Vijayalakshmi & Others Vs. Ashok Brothers Implex Ltd. & Others)***, dated 17.06.2022 to contend that where the policy is Liability Only Policy, it does not cover the risk of occupants of the car.

6. Per contra, the learned counsel appearing for the respondents/claimants had contended that the claimants have sustained grievous injuries and therefore, they are entitled to receive a compensation both from the owner as well as from the insurance company. When the owner is held liable, the insurance policy has to indemnify the owner of the vehicle and therefore, the award of the tribunal may not be disturbed.

7. I have given anxious consideration to the submissions made on either side and perused the records.

8. As per the claim petitions, all the claimants were occupants of a private car which met with an accident on 24.12.2007. Admittedly, there

was no other offending vehicle involved in the said accident. Even as per the claim petitions, the driver of the vehicle in which the occupants were travelling had driven the vehicle in a rash and negligent manner. The tribunal has also arrived at a finding that the driver of the car in which the claimants were travelled had driven the vehicle in a rash and negligent manner. Therefore, this Court has to peruse the insurance policy of the vehicle in which the claimants have travelled.

9. Admittedly, the vehicle was owned by the 1st respondent in the claim petition which is insured with the 2nd respondent. Exhibit R.1 is the copy of the insurance policy. A perusal of the said policy clearly indicates that it is Liability Only Policy and therefore, the occupants of the private car are not covered by the policy. Therefore, it is clear that the occupants of a private car are not covered under the policy and hence, the question of directing the insurance company to satisfy the award and thereafter, recover the same from the owner of the vehicle does not arise. Only in cases where there is insurance coverage, but there is violation of policy condition or permit condition, the question of invoking the principle of pay and recovery would arise. In the present case, there is no coverage at all and hence, the question of pay and recovery would not arise.

10. In view of the above said discussions and the judgment of the Division Bench of our High Court, this Court is of the opinion that the award of the tribunal invoking the principal of pay and recovery is liable to be set aside. The owner of the vehicle has not filed any appeal challenging either the liability or the quantum. Therefore, this Court is not disturbing the quantum fixed by the tribunal in each one of the claim petitions. The clause (iii) of the decree in all the claim petitions is hereby modified to the effect that the insurance company is exonerated in all the appeals. However, the liability on the owner of the vehicle, namely the 1st respondent in each one of the claim petitions is sustained. The owner of the vehicle is liable to pay the compensation amount determined by the tribunal in all the claim petitions with 7.5% interest from the date of claim petitions.

11. With the above said observations, all the Civil Miscellaneous Appeals stand allowed to the extent as stated above. No costs.

25.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal,
Sub-Court,
Palani.

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

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)Nos.713 to 715 of 2017

25.04.2023