IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3677 of 2019
And
C.M.P.No.21025 of 2019

The Branch Manager,
United India Insurance Company Limited
BO III Arjuna Tower,
248/164 Cherry Road,
Salem – 1. ... Appellant

Vs.

1.Madhu @ Madhammal
2.R.Saravanan ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 07.03.2018 made in M.C.O.P.No.499 of 2017, on the file of the Motor Accidents Claims Tribunal (Special District Court) Krishnagiri.

For Appellant : M/s.D.Baskaran
For Respondents : Mrs.A.Subadra
Amicus Curiae

J U D G M E N T

The second respondent before the Motor Accidents Claims

Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 07.03.2018 passed by the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, in M.C.O.P.No.499 of 2017.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.30 Lakhs alleging that on 22.05.2016 at about 12.00 hours, the second respondent and two others were returning to EB Mottur in the pick up van bearing Registration No.TN 54 Y 2478 belonging to the second respondent and insured with the appellant. At that time, a street dog suddenly crossed the road and in order to avoid direct hit against the street dog, the driver of the pick up van applied sudden brake, due to which, the van capsized on the roadside and the deceased died on the spot. After adjudication, the Tribunal awarded a sum of Rs.13,15,200/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till realization with cost and directed the appellant to deposit the award amount at the first instance with liberty to recover the same from the owner of the vehicle/ second respondent.

3.The learned counsel appearing for the appellant further submitted that as per the claim statement of the first respondent, the deceased was working as loading and unloading coolie and was earning Rs.20,000/- per month and the deceased was returning to EB Mottur in the pick up van belonging to the second respondent. Hence, the second respondent has to necessarily pay additional premium to the employee, however, the second respondent has not paid any additional premium for the employee. Hence, the appellant is not liable to pay any compensation to the claimant. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Ilakkiyamathi and others [C.M.A.No.2166 of 2019 dated 24.02.2023]***.

4.The learned Amicus Curiae appearing for the respondents submitted that the deceased travelled as a loading coolie and hence, the claimant is entitled to claim compensation under Section 147 of the Motor Vehicles Act and further submitted that there is no need for any additional premium to be paid by the owner of the vehicle/ second respondent.

5.Heard the learned counsel appearing for the appellant and the learned Amicus Curiae appearing for the respondents and perused the materials available on record.

6.The accident and the manner in which the accident happened are not disputed. The issue that arise for consideration in this appeal is whether the appellant is liable to pay compensation to the claimant or not.

7.The very same issue was considered by the Hon'ble Division Bench of this Court in the case of ***United India Insurance Company Limited Vs. Ilakkiyamathi and others [C.M.A.No.2166 of 2019 dated 24.02.2023]***, the relevant portion of which reads as follows:

> *"6. The question as to whether the Insurance Company would be liable to indemnify the insured <u>in cases where the employees of the insured travelled in the vehicle belonging to the insured and met with unfortunate accident.</u> 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.”

8.This Court perused Ex.P3 – copy of the Insurance Policy and it reveals that the second respondent employer has paid only basic premium and IMT-29 to the driver and no other amount was paid. In the absence of payment of additional premium to the employees, the award passed by the Tribunal warrants interference and the liability fastened on the appellant/ Insurance company is liable to be set aside.

9.The civil miscellaneous appeal is allowed. The judgment and decree dated 07.03.2018 passed by the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, in M.C.O.P.No.499 of 2017, is set aside as against the insurer/ appellant and the claimant/ first respondent is directed to proceed as against the second respondent/ owner of the vehicle for recovery of the award amount in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them.

10.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

18.11.2024

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

M.DHANDAPANI,J.
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To

1.The Motor Accidents Claims Tribunal,
(Special District Court), Krishnagiri.

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