IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2411 of 2021 and C.M.P. No.13744 of 2021

M/s.IFFCO-TOKIO General Insurance Co. Ltd.,
having office at No.28,
North Usman Road,
T.Nagar, Chennai-600 017. .. Appellant

Vs.

1.M.Kothandabani

2.Media Gate Private Limited,
T.Nagar, Chennai-600 017.

3.R.Karunakaran .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 06.10.2020 made in M.C.O.P. No.247 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Thiruvallur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.U.Chithambaram for R1
No appearance for R2
Dispensed with notice for R3

JUDGMENT

This appeal has been filed by the Insurance Company, challenging their liability to pay compensation since no additional premium was paid by the insured, the second respondent herein under IMT 29 to cover the claim of the first respondent/claimant, who was travelling in the car, owned by the second respondent, who is the employer of the first respondent/claimant.

2.The Tribunal, under the impugned Award, had relied upon a judgment of this Court in C.M.A. Nos.261 and 1067 of 2015 (The New India Assurance Co. Ltd. vs. Uthra) dated 16.03.2017 for the purpose of making the appellant/Insurance Company liable to pay compensation. However, the Tribunal failed to take into consideration the well settled law that unless and until the additional premium is paid by the insured under IMT 29 to give coverage to the employees, who are travelling in the insured car, the question of payment of compensation by the Insurance Company does not arise.

3.Learned counsel for the first respondent/claimant has also not raised any serious objection with regard to the settled law. Even though the Tribunal under the impugned Award has extracted paragraphs from the judgment rendered by this Court in C.M.A. Nos.261 and 1067 of 2015, the Tribunal has not gone into the aspect with regard to the non-payment of additional premium by the insured and IMT 29 though the said contention was raised by the Insurance Company before the Tribunal as well.

4.Admittedly, the first respondent is an employee of the second respondent and he was travelling in the vehicle, owned by the second respondent at the time of the accident, which resulted in injuries caused to him.

5.This Court has perused the Insurance Policy, which has been marked as Ex.P15 and has also perused the Tax Invoice cum Policy Schedule, marked as Ex.R2 and Indian Motor Tariff Report, marked as Ex.R3. As seen from the same, admittedly, the owner of the vehicle, viz.

the second respondent has not paid the additional premium for covering his employee, who was travelling in the insured vehicle.

6.In view of the settled law, the appellant/Insurance Company cannot be made liable to pay the compensation to the claimant as no additional premium was paid under IMT 29.

7.The second respondent has been duly served in this appeal and the name of the second respondent has also been printed in the cause list. The second respondent was set exparte by the Tribunal. Therefore, the first respondent/claimant can claim the compensation amount only from the second respondent as the appellant/Insurance Company cannot be made liable to pay compensation amount, as determined by the Tribunal.

8.For the foregoing reasons, the Award passed against the appellant/Insurance Company has to be set aside and this Appeal will have to be allowed.

9.Accordingly, the Award dated 06.10.2020 passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Thiruvallur in M.C.O.P. No.247 of 2018 is hereby set aside and this appeal is allowed.

10.However, insofar as the Award passed against the second respondent, the owner of the vehicle is concerned, it is not interfered with by this Court. The first respondent/claimant is directed to proceed against the second respondent for the recovery of the compensation amount, in the manner known to the first respondent/claimant under law. In case the award amount has been withdrawn by the first respondent/ claimant from the Tribunal pursuant to the impugned Award, he is directed to refund the same to the appellant/Insurance Company and if the award amount deposited by the appellant/Insurance Company is still lying to the credit of the M.C.O.P. No.247 of 2018 before the Tribunal, the appellant/Insurance Company is permitted to withdraw the said amount by filing an appropriate application. No costs. Consequently, connected C.M.P. is closed.

16.04.2024

vga

ABDUL QUDDHOSE, J.

vga

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Thiruvallur.

2.The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A. No.2411 of 2021 and C.M.P. No.13744 of 2021

16.04.2024