BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED **08.03.2024**

CORAM

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.M.A.(MD)No.15 of 2009
and
M.P.(MD)No.1 of 2009

United India Insurance Co. Ltd.,
Rep. Through its Branch Manager,
Pallivasal Street,
Perambalur. ...Appellant

/Vs./

1.Sarasu @ Saroja
2.Rajendran ...Respondents

Prayer: Appeal - filed under Section 30 of the Workmen's Compensation Act, to set aside the award passed by the Commissioner of Workmen's Compensation and Deputy Commissioner of Labour, Thiruchirapalli in W.C.No.167 of 2002 dated 02.09.2005.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.P.Subbaraj (R1)
No appearance (R2)

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award passed by the Commissioner of Workmen's Compensation and Deputy Commissioner of Labour, Thiruchirapalli in W.C.No.167 of 2002 dated 02.09.2005.

2. The brief facts of the case are as follows:-

(i) The claimant / first respondent was working as a load-woman under the second respondent. When she was travelling from V.Kaikatti to Ariyalur along with loaded mixer machine and other load-women by the mini lorry bearing Reg.No.TN-55-B-9475, the mini lorry dashed against TNSTC Bus bearing Reg.No.TN-31-N-0994, due to which, her left hand was cut. Hence, the claimant / first respondent filed a claim petition in W.C.No. 167 of 2002 seeking compensation amount.

(ii) The Insurance Company filed a counter denying all the averments and stated that the liability of the insurance company is subject to terms and conditions, limitations and restrictions of the policy.

3. Before the Tribunal, on the side of the claimants / first respondent, P.W.1 to P.W.8 were examined and Ex.P1 to P13 were marked and on the side of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to R4 were marked.

4. The Tribunal, after considering oral and documentary evidence available on record, found that the insurance company is liable to pay compensation and awarded a compensation of Rs.2,52,991/- to the claimant / first respondent along with the interest at 12% from the date of the accident. Challenging the same, the insurance company filed this appeal.

5. The appellant / insurance company filed this appeal raising various grounds stating that the paying compensation for the passengers travelled in a goods vehicle is beyond the limit of the policy condition.

6. The learned counsel appearing for the first respondent submits that the first respondent is not in a position even to do her daily needs.

7. Heard the learned counsel appearing for the appellant insurance company and the learned counsel appearing for the first respondent.

8. The Tribunal, based on the evidence has awarded compensation of Rs.2,52,991/-. In my considered opinion, the award is just and reasonable and therefore the award is confirmed.

9. It is settled position of law that in the case of claim made by third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the claimant and thereafter, recover the same from the owner of the vehicle.

10. In ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others***, reported in ***(2004) ACC 524 (SC)***, the Hon'ble Supreme Court in paragraph 7 held as follows:-

> *"(7) ....For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take*

assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured."

11. In the result, the award of the tribunal is confirmed and the appellant is directed to pay the award amount to the claimant / first respondent at the first instance and thereafter, recover the same from the owner of the vehicle as per the mode incorporated in *Shri Nanjappan* case referred to above.

12. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. The claimant / first respondent is permitted to withdraw the amount as awarded by the Tribunal, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. Consequently, connected miscellaneous petition is also closed.

08.03.2024
(6/6)

NCC : Yes/No
Index : Yes/No

V.BHAVANI SUBBAROYAN, J.

sm

TO:-

1.The Deputy Commissioner of Labour, Thiruchirapalli.

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

Judgment made in
C.M.A.(MD)No.15 of 2009
(6/6)

Dated:
08.03.2024