BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.303 to 308 of 2019
and
C.M.P(MD)Nos.3958 to 3963 of 2019 & 1571, 1614, 1643, 1644 & 1646 of 2020

C.M.A(MD)No.303 2019:

The Divisional Manager,
New India Assurance Company Limited,
Divisional Office,
No.248B, Rekha Towers,
Kamarajar Salai,
Madurai District. ... Appellant/2nd Respondent

Vs.

1.Thangabalan ... 1st Respondent/Petitioner

2.Marimuthu ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.848 of 2014, dated 23.10.2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Madurai and allow the appeal with costs.

In All Cases:

For Appellant : Mr.J.S.Murali

For R-1 : Mr.A.Theethar

For R-2 : No appearance

COMMON JUDGMENT

The instant appeals have been filed by the Insurance Company challenging the common award passed in M.C.O.P.Nos.848, 849, 851 to 854 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Madurai, primarily on the ground of liability.

2. The claimants in all the above said claim petitions were occupants of a private car owned by the first respondent in the claim petitions and insured with the second respondent. While they were travelling in the said car as passengers, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against a roundana and the vehicle got capsized. The claimants have sought for compensation in their respective claim petitions.

3. The Insurance Company in all the claim petitions has filed a counter contending that, though the vehicle is covered under a policy, it is a 'liability only policy' and therefore, the occupants of the car are not covered by the policy. The Tribunal while considering the said issue has arrived at a finding that, the occupants of the car can be considered to be a third party to the contract of insurance and therefore, they are also covered by the policy. Based upon the above said finding, the Tribunal has proceeded to award compensation to the respective claimants. Challenging the said award, the present appeal has been filed by the Insurance Company.

4. According to the learned Counsel appearing for the Insurance Company, when the policy is liability only policy, the occupants of a car can never be treated to be a third party and therefore, the Tribunal was not right in interpreting the occupants of a private car as a third party and mulcting the liability upon the Insurance Company. He further contended that the Tribunal was not right in awarding pay and recovery when there is no coverage for the occupants of a private car. Hence, he prayed for allowing the appeal.

5. Per contra, the learned Counsel appearing for the claimant had contended that, the contract of insurance is between the owner of the vehicle and the Insurance Company. As far as the occupants of the car are concerned, they are third parties to the contract of insurance and therefore, they are entitled to receive compensation from the Insurance Company. He further relied upon the judgment of the Hon'ble Supreme Court reported in ***2022 (2) TN MAC 536 [S.Mohana Krishnan Vs. K.Balasubramaniyam and Others]***, wherein, the Hon'ble Supreme Court, after referring to the judgment of ***United India Insurance Company Limited, Shimla Vs. Tilak Singh and Others [2006 (4) SCC 404],*** had referred the issue to a Larger Bench. The learned Counsel further contended that as long as the issue is decided by the Larger Bench, the occupants of a private car should only be treated as a third party and the award of the Tribunal may be sustained.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. Policy of the car has been marked as Exhibit R.1. A perusal of the policy indicates that it is a private car liability policy. No additional premium has been paid for the occupants of the car. Therefore, the policy covers only third party coverage and personal accident cover for owner and legal liability cover for the paid driver.

8. The Hon'ble Supreme Court in a judgment reported in ***2006 (4) SCC 404 [United India Insurance Company Limited, Shimla Vs. Tilak Singh and Others]*** has categorically held that, the gratuitous passengers carried in a private car are not covered by an 'Act only policy'. Though the said judgment has been referred to a Larger Bench, till it is modified or set aside by a larger Bench of the Hon'ble Supreme Court, this Court is bound by the said decision. In such view of the matter, it is clear that there is no coverage for the occupants of the private car. Therefore, the Tribunal was not right in passing an order of pay and recovery as against the Insurance Company. An order of pay and recovery could be passed only when there is a coverage and there is violation of a policy conditions. In the present case, since there is no coverage at all, the question of pay and recovery would not arise.

9. In view of the above said facts, the award of the Tribunal as against the appellant Insurance Company is hereby set aside. However, the award would continue to operate as against the first respondent in the claim petitions, who is the owner of the vehicle. This Court is not interfering with the quantum of compensation as fixed by the Tribunal. The appeal is allowed to the extent of exonerating the Insurance Company alone mulcting the liability upon the owner of the vehicle.

10. The Civil Miscellaneous Appeals stand partly allowed to the extent as stated above. The amount, if any deposited by the Insurance Company shall be refunded along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

04.07.2024

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

To

1.The Motor Accident Claims Tribunal,
Special Subordinate Court,
Madurai.

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

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)Nos.303 to 308 of 2019

04.07.2024