BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.458 of 2014
and
MP(MD) No.2 of 2014

The United India Insurance Co Ltd
Through its Branch Manager,
924a, Main Road, CCC Complex
Kovilpatti- 628504 ... Appellant/ 2nd Respondent

Vs.

1. A.Ayathu .. Petitioner
2. K.S.C.Sivanu .. Respondents/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.06.2013 passed in MCOP No. 714 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Dindigul and set aside the same.

For Appellant : Mr.Robert Chandrakumar

For R1 : Mr.A.Arul Jenifer
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in MCOP No. 714 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Dindigul, wherein the first respondent herein has filed petition under Section 166 of the

Motor Vehicles Act claiming compensation of Rs.3,00,000/- towards the injuries sustained by him in the road accident.

2. The Tribunal has awarded a sum of Rs. 1,10,000/- along with interest @ 7.5% per annum from the date of petition till the date of realization of the amount by directing the second respondent/insurance company to pay the amount. As against the order passed by the Tribunal, the second respondent/insurance company has preferred this appeal by disputing the liability.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

4**. The brief averments of the petition filed before the Tribunal are as follows:**

On 19.03.2014 at about 1.30 am., when the petitioner was proceeding in a two wheeler bearing Reg. No. TN 01 Z 0369, at that time a lorry came in a rash and negligent manner in the opposite direction and inorder to avoid the accident the vehicle was turned towards left side, at that time the driver of the vehicle lost his control and dashed against the road side tree, thereby the petitioner sustained injuries and permanently disabled. The accident took place due to the negligence on the part of the driver of the first respondent. The first respondent vehicle was insured with the second respondent. Therefore both the respondents are liable to pay the compensation to the petitioner.

5**. The brief averments of the counter filed by the second respondent are as follows:**

The petition is not maintainable either in law or on facts. The accident did not take place due to the negligence on the part of the driver of the first respondent and the vehicle was only covered under the act policy and no extra premium was paid for the passengers travelling in the vehicle. The first respondent vehicle was used for rent purpose. The vehicle was not utilized for own purpose. Therefore there is a violation of condition of policy, hence the second respondent is not liable to pay compensation to the petitioner.

6. Before the Tribunal in order to prove the case of the petitioner, he has examined P.W.1 and P.W.2 and marked documents Exps.P.1 to P.6. On the side of the respondent R.W.1 was examined and one document was marked as Ex.R.1.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.1,10,000/-with interest @ 7.5% per annum from the date of petition till the realization by directing the second respondent/insurance company to pay the amount.. As against the order of the Tribunal, the present appeal has been filed by the second respondent/Insurance company on various grounds by disputing the liability.

8. The learned counsel appearing for the appellant would contend that the first respondent vehicle was insured with the second respondent and the policy is only act policy and there is no extra premium paid for the passengers, thereby he is not liable to pay the compensation. The vehicle was not utilized for own purpose and it was utilized for rental purpose thereby violated the conditions of policy. The appellant/second respondent is not liable to pay any compensation to the petitioner. The Tribunal failed to consider all the above facts and erroneously fixed the liability as against the appellant/second respondent.

9. The learned counsel appearing for the first respondent would contend that the first respondent vehicle was insured with the second respondent and extra premium was also collected by the appellant/second respondent thereby policy is comprehensive policy . So far as the petitioner is concerned he is third party, thereby the insurance company has to pay the amount to the petitioner. The Tribunal after analyzing all the evidences correctly fixed the liability as against the appellant/second respondent and awarded fair compensation, therefore the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

11. In this case there is no contravention that the second respondent vehicle was insured with the appellant/second respondent on the date of occurrence. According to the appellant/second respondent the policy is act policy and no extra

premium was paid for the passengers. Therefore they are not liable to pay the compensation to the petitioner. According to the first respondent/petitioner , the second respondent vehicle was insured with the appellant/second respondent on the date of accident and the petitioner is third party to the insurance company and the insurance company also received premium in other heads also, thereby the Insurance company is liable to pay compensation to the petitioner.

12. Further the trial Court in its order has categorically held that the R.W.1 in his evidence admitted that they collected premium other than third parties and extra premium also collected and thereby the policy is not act policy and policy is only comprehensive policy. As per the admission made by R.W. 1 the trial Court has held that policy is not act policy and only comprehensive policy. This Court also perused the records and the R.W.1 in his evidence stated that extra premium was paid other than third parties. Therefore as per the admission made by R.W. 1, the insurance company also collected extra premium apart from third party insurance, thereby the petitioner cannot be treated as gratuitous passenger. In this context the learned counsel appearing for the appellant relied on the following judgments:

i)National Insurance Co Ltd .vs. Pooja Manoj Singh and others reported in 2011 ACT 2816

ii)New India Assurance Co Ltd, Divisional Office,2, Main road, Dindigul-1 .vs.S.Krishnasamy and others reported in 2015(1)TN MAC 19 (DB)

ii)Branch Manager, New India Assurance Co Ltd.,Post Box. No. 43,N.S. Towers, Near Stadium, Bus Stand Palakad- 13, Kerala State .vs. Palanisamy and others reported in 2023(1)TN MAC 79

iv)National Insurance Co. Ltd, Branch II, Thoothukudi , Chidambaranar District- 628 001 .vs. Saravanan and others reported in 2023(2)TN MAC 354

13.On careful perusal of the above judgments they will not be applicable to the present facts of the case since the facts in this case are distinguishable.

14. In view of the same, this Court is of the opinion that the Tribunal after elaborate discussion came to a fair conclusion thereby warrants no interference. As aforesaid the second respondent is liable to pay the compensation to the petitioner. Therefore as discussed supra this Civil Miscellaneous Appeal has no merits and deserves to the dismissed.

15.Accordingly this Civil Miscellaneous Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

20.02.2024

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

1. The Motor Accident Claims Tribunal
   Special Sub Judge, Dindigul

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

P. DHANABAL,J.

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