BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.618 of 2017
and
C.M.P(MD) No.6459 and 7383 of 2017

M/s. United India Insurance Company Limited,
Represented through its,
Regional Manager,
Madurai. ... Appellant/2nd Respondent

-vs-

1. Maheshwari

2. Minor Kishorekumar

3. Minor Jayakumar
Respondents 2 and 3 are Represented by
Natural Guardian and their mother,
Maheshwari

4. Rathi ... Respondents 1 to 4/
Petitioners 1 to 4

5. Harikrishnan ... 5th Respondent/1st Respondent

6. Nagalakshmi

7. M/s.Sriram General Insurance Company,
Represented by its Branch Head,
No.30, Hakkim Ajmalkhan Road,
Chinna Chokkikulam,
Madurai. ... Respondents 6 and 7/
Respondents 3 and 4

(Respondents 5 and 6 remained *ex parte* before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.02.2016, passed in M.A.C.O.P.No.42 of 2013, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Madurai.

For Appellant : Mr.A.Shajahan

For Respondents : Mr.K Ravi – for R1 to R4

: Mr.D.Sivaraman – for R7

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/ United India Insurance Company Limited, challenging the award passed in M.C.O.P.No.42 of 2013, on the file the Motor Accidents Claims Tribunal, IV Additional District Court, Madurai, primarily, on the ground of liability.

2. According to the claimants, the victim was travelling as a passenger in a Car owned by the first respondent and insured with the second respondent in the claim petition. On 05.04.2012, when the Car was

proceeding in the Trichy to Madurai Road, at about 04.20 hours, a lorry owned by the third respondent and insured with the fourth respondent came in a rash and negligent manner and dashed against the Car. Due to the said impact, the victim had passed away. According to the claimants, the deceased was a mason, and he was 30 years old and earning a sum of Rs,10,000/ per month. They have prayed for compensation of Rs.24,00,000/- (Rupees Twenty Four Lakhs only).

3. The appellant/United India Insurance Company Limited has filed a counter contending that the policy of the Car is "Act Policy" and therefore, it does not cover the passengers of the Car.

4. The insurer of the Lorry, namely, M/s. Sriram General Insurance Company has also filed a counter contending that the driver of the lorry was not negligent and therefore, they are not liable to pay any compensation.

5. Considering the oral and documentary evidence on record, the Tribunal has arrived at a finding that the driver of the Car as well as the Lorry were negligent in causing the accident. The Tribunal apportioned the liability as 70% upon the driver of the Car and 30% upon the insurer of the lorry. The

Tribunal has proceeded to fix the total compensation at Rs.16,79,000/- (Rupees Sixteen Lakhs and Seventy Nine Thousand only). Challenging the said award, the present appeal has been filed by the appellant/United India Insurance Company.

6. According to the learned counsel appearing for the appellant/ United India Insurance Company, the policy of the Car is only Act policy and does not cover passengers of the Car. Though a specific defence was taken in a counter, the same has not been properly appreciated by the Tribunal. Hence, he prayed for allowing the appeal and exonerating the Insurance Company.

7. The learned counsel appearing for the claimants had relied upon the judgment of the Hon'ble Supreme Court reported in ***2015(1) TN MAC 801 (Khenyei Vs. New India Assurance Company Limited and others)*** and contended that in case of Composite Negligence, the percentage of negligence is fixed only for the purpose of resolving the *inter se* dispute between the tortfeasors. However, the claimants would be entitled to recover the award amount from any one of the Tortfeasor by filing execution petition.

8. The learned counsel appearing for the seventh respondent/ M/s.Sriram General Insurance Company had contended that the said judgment is not applicable to the facts of the present case. He further contended that in the judgment of the Hon'ble Supreme Court, there was no dispute with regard to the liability of the Insurance Company and therefore, based upon the apportionment of the negligence, the quantum of compensation was fixed.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. The deceased had travelled as a passenger in a Car which met with an accident. The Tribunal, after considering the oral and documentary evidence has fixed 70% of the negligence on the part of the driver of the Car and 30% of the negligence on the part of the driver of the lorry. Neither the owner of the lorry nor the insurer of the lorry have chosen to challenge the said award. It is submitted before the Court that the insurer of the lorry/M/s.Sriram General Insurance Company have deposited 30% of the award amount.

11. The Insurance Policy of the Car has been marked as Ex.R1. A perusal of the said Policy reveals that it is a liability only policy and does not cover the passengers of the vehicle. However, a sum of Rs.250/- has been paid as a premium for five unnamed passengers and each person would be entitled to receive a sum of Rs.1,00,000/- (Rupees One Lakh only). Therefore, it is clear that the policy does not cover the passengers of the Car, but the passengers are covered only under the Personal Accident Policy to the extent of Rs.1,00,000/- (Rupees One Lakh only). Therefore, the United India Insurance Company cannot be mulcted with the liability beyond an extent of Rs.1,00,000/- (Rupees One Lakh only).

12. In view of the above said deliberations, the liability of the appellant/Insurance Company is hereby restricted to Rs.1,00,000/- (Rupees One Lakh only). The claimants are at liberty to proceed in accordance with the judgment of the Hon'ble Supreme Court reported in ***2015(1) TN MAC 801 (Khenyei Vs. New India Assurance Company Limited and others)*** M/s.Sriram Insurance Company is at liberty to raise all the defences in the execution proceedings. Excess amount, if any deposited by the appellant/ Insurance Company, shall be refunded to them along with accrued interest.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

23.07.2024

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

1. The Motor Accidents Claims Tribunal,
 IV Additional District Court, Madurai.

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

R.VIJAYAKUMAR,J.

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