**(2013) 11 MAD CK 0174**

**Madras High Court**

**Case No:** C.M.A. No. 3060 of 2007

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| United India Insurance Co., Ltd. | APPELLANT |
| Vs | |
| Ganesan Assistant Secretary and The Special Officer The Tiruchengode Agricultural Producers Coop. Marketing Society Ltd. | RESPONDENT |

**Date of Decision:** Nov. 13, 2013

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** N. Vijayaraghavan, for the Appellant; M.S. Palaniswami for R2, for the Respondent

**Final Decision:** Dismissed

**Judgement**

C.S. Karnan, J.

The appellant/second respondent has preferred the present appeal against the judgment and decree dated 29.06.2007, made in M.C.O.P. No. 775 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem. The short facts of the case are as follows:-The claimant, had filed a claim petition in M.C.O.P. No. 775 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem, claiming compensation of a sum of Rs. 5,00,000/- from the respondents for the injuries sustained by him in a motor vehicle accident.

2. It was submitted that the claimant was working in the first respondent''s Society and attended a meeting at Collector''s Office, Namakkal, on 04.02.2006. After the meeting, when the claimant and two other officers were returning to their office in the first respondent''s Tata Sumo Car bearing registration No. TN28 R1414 and at about 22.10 hours and when the car was proceeding on Namakkal-Tiruchengode Main Road, near the west of Barath Polytechnic, the driver of the car drove it in a rash and negligent manner and in order to avoid collision with a lorry coming in the

opposite direction, the driver of the car applied sudden brakes and due to which the car capsized on the middle of the road and dashed against the bus bearing registration No. TN33 AE4899 and caused the accident. As a result, the claimant sustained grievous injuries and was taken to C.M. Hospital, Coimbatore. At the time of accident, the claimant was aged 58 years and was working as the Assistant Secretary at Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd., Tiruchengode and earning Rs. 24,027/- per month. Hence, the claimant had filed the claim petition against the respondents, who are the owner and insurer of the Tata Sumo Car bearing registration No. TN28 R1414.

3. The second respondent Insurance Company, in their counter affidavit, had denied the averments made in the claim petition regarding age, income and occupation of the claimant, manner of accident, nature of injuries sustained and medical treatment taken and medical expenses incurred. Further, it was submitted that as no extra premium had been paid to cover the risk of passengers travelling in the car, they were not liable to pay any compensation. Further, it was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed two issues for consideration namely:

i. Whether the accident had happened due to the rash and negligent driving by the driver of the first respondent''s Tata Sumo Car bearing registration No. TN28 R1414? And

ii. Whether the respondents are liable to pay the compensation?

5. In the same accident, two other claim petitions had been filed by the injured claimants in M.C.O.P. Nos. 773 and 774 of 2006, claiming compensation from the same respondents for the injuries sustained by them in the accident. Based on a memo filed by the counsels for their respective claimants, a joint trial was conducted and a common evidence was recorded. The claimants in M.C.O.P. Nos. 773 to 775 of 2006 were examined as P.Ws.1 to 3 and one Dr. Sridhar was examined as P.W.4 and 16 documents were marked as Exs.A1 to A16 namely FIR, wound certificate, medical bills, pay certificate and age certificate, wound certificates, medical bills, disability certificates and X-rays. On the respondents'' side, two witnesses were examined as R.W.1 and R.W.2 and ten documents were marked as Exs.B1 to B10 namely Joining reports, pay certificates, fitness certificates, copy of insurance policy, marked portion of Ex.B9, Page-2, Clause-I.

6. P.Ws.1 to 3 had adduced evidence which is corroborative of the statements made in the claim petition regarding manner of accident and in support of their evidence, they had marked Exs.A1 to A16. On scrutiny of Ex.A1, it is seen that FIR had been lodged against the driver of the car.

7. P.W.4 Doctor had adduced evidence that he had examined the claimant and observed that due to the injuries sustained in the accident, the claimant had discomfort in using his shoulder and collarbone. Further, he certified that the disability sustained by the claimant was 25%. However, the Tribunal, on scrutiny of Ex.B1 observed that the claimant had recovered and joined duty and as such held that the claimant had not sustained loss of income due to disability.

8. R.W.2 D. Ganapathy had adduced evidence that as per the insurance policy, the first respondent had not paid any premium to cover the risk of their employees and as such they are not liable to pay any compensation and in support of his evidence, he had marked Exs.R9 and R10. The Tribunal, on scrutiny of oral and documentary evidence, held that the accident had been caused by the rash and negligent driving of the driver of the car. The Tribunal, on scrutiny of Exs.R9 and R10, observed that the policy was a car package policy and that it covers claim to the third party. However, the Tribunal, after scrutiny of policy, opined that the said accident had not happened during the course of employment and as it had happened while the claimant was returning to his house, held that the second respondent is liable to pay compensation.

9. The Tribunal, on scrutiny of documentary evidences, awarded a sum of Rs. 15,000/- for pain and suffering, Rs. 15,000/- for loss of comfort and Rs. 10,000/- for transport and nutrition. In total, the Tribunal had awarded a sum of Rs. 40,000/- as compensation to the claimant and directed the respondents to pay the award amount, jointly or severally, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, with costs, within a period of one month from the date of it''s order.

10. Aggrieved by the said Award, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant Insurance Company has contended in the appeal that the Tribunal erred in fastening the liability on the appellant in a case where the claimant was an employee of the owner of the vehicle, travelling in the course of his employment and as such he is not extended coverage under the policy, as the vehicle is a private car. Further, it is contended that the Tribunal failed to note that as per the nature of policy, other than the driver, no other employee is required to be covered and as such the occupants in the car cannot be treated as a third party and hence the reasoning in this regard is erroneous. Hence, it is prayed to set aside the award passed by the Tribunal.

12. The learned counsel appearing for the claimant has argued that the car bearing registration No. TN28 R1414 had been driven by it''s driver in a negligent manner and in a high speed on Namakkal road and that in order to avoid collision with a lorry coming in the opposite direction, the driver of the car had applied sudden brakes due to which the car had capsized. As a result, three persons sustained

grievous injuries. Due to his rash and negligent driving and for causing injuries to passengers, FIR had been registered against the driver of the car. All the three claimants were occupants of the car. In the present appeal, the claimant had sustained 25% disability and he had spent a sum of Rs. 13,000/- for medical expenses. However, the Tribunal had not granted adequate compensation under the relevant heads namely loss of earning during medical treatment period and attender charges. The very competent counsel has submitted further that the Tribunal had decided the negligence and liability in an appropriate manner. As such, there is no lacuna in the said impugned award.

13. On considering the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. This Court is of the further view that the claimant had travelled as an occupant in the said car and the Tribunal had also observed that he could be considered only as a third party as the accident had occurred after office hours and such the liability fastened on the appellant is an appropriate one.

14. As per this Court records, it is seen that the entire compensation amount has already been deposited by the appellant, to the credit of M.C.O.P. No. 775 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem.

15. Now, it is open to the claimant to withdraw the entire compensation amount, with accrued interest thereon, lying in the credit of M.C.O.P. No. 775 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated 29.06.2007, made in M.C.O.P. No. 775 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Salem, is confirmed. No costs.