



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1645 of 2018 and
CMP No.13055 of 2018

M/s. Reliance General Insurance Company Limited
Represented by its Divisional Officer
Having Office at No.89,
100 Feet Road, Vivyan Plaza
Ground Floor, Mudaliarpet,
Pondicherry.

... Appellant

Vs.

1. Ramesh

2. S.Loganathan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree made in MCOP No.13 of 2012, dated 29.04.2016, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Chengalpattu.

For Appellant : Mrs.C.Harini for
Mr.M.B.Gopalan

For Respondents : Mr.A.C.Kumaragurubaran -R1
Mr.S.Muthaiah - R2



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C.M.A. No.1645 of 2012



J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and decree made in MCOP No.13 of 2012, dated 29.04.2016, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Chengalpattu.

2. The 1st respondent herein is the claimant. Before the Tribunal, the 2nd respondent who is the owner of the offending vehicle was arrayed as 1st respondent and the appellant who is the Insurer of the offending vehicle was arrayed as 2nd respondent.

3. The case of the claimant is that on 15.10.2011 at about 19.00 hours, he was proceeding in a Hero Splendor Motor Cycle bearing Regn. No.TN-25-S-6928 from Chunambedu to Vennangupattu Village, at a moderate speed on the proper side of the road and while nearing in front of the Chelliamman Koil after Thangal Thottacheri, the 2nd respondent's car bearing Regn. No.TN-32-Q-5909, which came in the opposite direction and driven by its driver in a rash and negligent manner and also at a terrific speed, dashed against the claimant's motor-cycle due to which, the claimant



sustained fractures and grievous injuries all over the body. Immediately he was admitted in Pondicherry Institute of Medical Sciences and he also underwent a surgery and discharged from the hospital on 25.11.2011.

4. The claimant/1st respondent filed a claim petition in MCOP No.13 of 2012, dated 29.04.2016, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Chengalpattu, against the 2nd respondent and appellant who are the owner and Insurer of the offending vehicle, claiming compensation of Rs.20,00,000/- for the injuries sustained by him stating that due to the accident, his right leg knee was amputated and thereby, he sustained permanent disability and he could not move independently and do his normal avocations as before.

5. In order to substantiate the claim, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.P.1 to Ex.P.12. On the side of the respondent, one witness was examined as R.W.1 and one document was marked as Ex.R1.

6. Before the Tribunal, the 2nd respondent herein was set ex-parte.



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7. The Tribunal, after hearing the arguments on both sides and considering the materials, partly allowed the petition with proportionate cost holding that the appellant/Insurance Company and 2nd respondent/owner of the offending vehicle, shall jointly and severally pay the compensation amount of Rs.9,20,816/- to the claimant/1st respondent with interest at the rate of 7.5% per annum from the date of petition till the date of realization excluding default period if any and directed the appellant/ Insurance company to deposit the award amount on behalf of the 2nd respondent/owner of the offending vehicle.

8. Challenging the said Award, the appellant/Insurance Company has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company would submit that the offending vehicle was not insured with the appellant/Insurance Company and there is no relationship of insurer and policy holder between the appellant and 2nd respondent. However, the Tribunal has erroneously fixed the liability on the appellant/Insurance Company despite the claimant/1st respondent did not prove that the offending



vehicle was insured with the appellant/Insurance Company. Therefore, the appeal may be allowed and the Award passed by the Tribunal fixing liability on the appellant/Insurance Company may be set aside.

10. The learned counsel for the 1st respondent/claimant would submit that they got all the particulars from the Investigating Agency only. Even the information received under the RTI Act and the Cover Note of the policy would clearly show that the offending vehicle was insured with the appellant/Insurance Company. The claimant/1st respondent is a poor and innocent person and he was aware of all these things. Only the Police authorities furnished all the particulars and as per the particulars, the offending vehicle was insured with the appellant/Insurance Company and therefore, the Tribunal fixed the liability on the appellant/Insurance Company. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents.



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12. Admittedly, the accident is not in dispute and the result of the accident is also not in dispute. Though the learned counsel for the 1st respondent/claimant stated that the offending vehicle was insured with the appellant/Insurance Company, the learned counsel for the appellant/Insurance Company vehemently denied the same. Once it is denied and the appellant/Insurance Company proved negatively, then it is for the person who claims the compensation to prove that the offending vehicle was insured with the appellant/Insurance Company. Even the 1st respondent/claimant has not marked any policy and he is only relying on the report filed by the Investigating Agency and also the informations received under the RTI Act, which would not bind the appellant/Insurance Company since the appellant/Insurance Company clearly denied that the offending vehicle was not insured with them and there is no relationship of Insurer and Policy holder between the appellant and the 2nd respondent. The Tribunal has failed to consider the same and only the Cover Note was marked by the 1st respondent/claimant which is said to have been given by the Police Authority for which, the appellant/Insurance Company may not be held liable. It is for the 1st respondent/claimant to prove that at the time of accident, the offending vehicle was insured with the appellant/Insurance Company and there was a



relationship of Insurer and Policy Holder between the appellant/Insurance Company and the owner of the offending vehicle/2nd respondent. In the absence of the same, the appellant/Insurance Company cannot be indemnified for the loss caused by the owner of the offending vehicle/2nd respondent.

13. This Court as appellate Court, final Court of fact finding, need not simply endorse the views of Tribunal. The appellate Court can independently re-appreciate the entire materials and give independent findings.

14. Though the learned counsel for the 1st respondent/claimant stated that the offending vehicle was insured with the appellant/Insurance Company, no policy was marked. He has also not summoned any of the documents from the appellant/Insurance company or any witnesses to prove his claim. Even though, on the side of the appellant/Insurance Company, R.W.1 was examined, the 1st respondent/claimant has not shown him the materials obtained from the Police Department under the RTI Act and confirmed that the informations received from the Police are true and the offending vehicle was insured with the appellant/Insurance Company.



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15. Under these circumstances, this Court finds that the 1st respondent/claimant has failed to prove that at the time of accident, the 2nd respondent/owner of the offending vehicle was having insurance policy for the offending vehicle and the vehicle was insured with the appellant/Insurance Company and therefore, the appellant/Insurance Company is liable to pay the compensation.

16. Neither the 1st respondent/claimant nor the 2nd respondent/owner of the offending vehicle have proved that at the time of accident, the offending vehicle was insured with appellant/Insurance Company. In the absence of the same, this Court finds that the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent/claimant.

17. Therefore, the Award passed by the Tribunal in MCOP No.13 of 2012, dated 29.04.2016, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Chengalpattu, fixing liability on the appellant/Insurance Company, is set aside.



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18. However, as stated above, the accident is not in dispute, the manner of accident is also not in dispute and the only dispute is with regard to the Insurance Policy. If there is no insurance policy for the offending vehicle, automatically, the owner of the offending vehicle/2nd respondent is liable to pay the compensation. Hence, the 1st respondent/claimant is at liberty to recover the compensation as awarded by the Tribunal, from the 2nd respondent/owner of the offending vehicle in the manner known to law.

19. Further, the 1st respondent/claimant is at liberty to file damages against the Investigating Agency who gave him false informations and made him to run pillar to post.

20. With the above observations, this Civil Miscellaneous Appeal is Allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

04.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Court)
Chengalpattu.

2. The Section Officer,
VR Section, High Court, Madras.

C.M.A. No.1645 of 20





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C.M.A. No.1645 of 2018



P.VELMURUGAN. J.

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