

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No.263 of 2015

M/s. Oriental Insurance Co. Ltd.,
Arcot Road, Vellore.

..Appellant/ Respondent II

Vs.

1. Thiru. Vimalkumar ...1st Respondent/ Petitioner

2. The Manager,
M/s. Ashok Brothers Impex (P) Ltd.,
No.6/D, Lakshmi Bhavan,
No.609, Mount Road,
Chennai -6. ..2nd Respondent/ I Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 25.09.2014 passed in M.C.O.P. No. 150 of 2009 by the Motor Accidents Claims Tribunal (Subordinate Judge), Gudiyatham.

For Appellant :: Mr.J. Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 1,62, 258/- and fastening of liability on the owner of the vehicle (car), insured with the appellant, in respect of the accident, which occurred on 25.01.2009, in which the 1st respondent, who was travelling as a passenger in the said vehicle, sustained injuries.

2. Heard Mr. J. Chandran, learned counsel for the appellant, who would submit that though the car, insured with the appellant, was a private car, it was used for commercial purpose, which amounts to violation of policy condition and therefore, the liability should not have been fastened on the appellant and the learned counsel seeks to set aside the award on this ground.

3. However, a perusal of the award would show that no such plea was taken before the Tribunal, either in the counter statement or in the additional counter statement. In the absence of any such material pleading, it is not open to the appellant to putforth such a contention, which is not sustainable. Hence, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Connected M.P.is closed.

4. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent is permitted to withdraw the amount within a period of two weeks thereafter.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nv

To

The MACT (Sub Court),
Gudiyatham, Vellore District

1 cc to M/s. S. Chandran, Advocate, Sr. 7112

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