

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2015

CORAM:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.284 of 2009

And

M.P.No.1 of 2009

The Manager Claims,
Tata AIG General Insurance Co. Ltd.,
Claims Department,
Chennai - 600 002. Appellant/Respondent
Vs.
D.Krishnamurthy Respondent/Petitioner

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.297 of 2007 dated 10.12.2008, on the file of the Motor Accidents Claims Tribunal, Additional District Court Fast Track Court, Vellore.

For Appellant : Mr.N.Vijayaraghavan
For Respondent : Mr.C.Prabakaran

JUDGMENT

The respondent Tata AIG General Insurance Company Limited before the Tribunal is the appellant herein. The present appeal is filed by the insurer against the award of compensation of Rs.1,55,543/- to the insured/owner of the vehicle for the expenses incurred by him for repairing the damages caused to the vehicle in the road traffic accident.

2.In this appeal, the appellant challenges the validity of the amount awarded mainly on the issue of maintainability of the claim petition under Section 165 of the Motor Vehicles Act, 1988.

3.The learned Standing Counsel for the appellant/ Insurance Company by relying upon the relevant provision of law under Section 165 of the Motor Vehicles Act, 1988 and by relying on the principle laid down by the Hon'ble Supreme Court in the decision reported in (1996) 1 Supreme Court Cases 221 (Complete Insulations (P) Limited versus New India Assurance Company Limited) and by the Division Bench of our High Court in the decision reported in 2004 ACJ 801 (United India Insurance Company Limited and another Versus Thiruvalluvar Transport Corporation Limited and others) seriously questioned the

locus standi of the owner of the vehicle to maintain any claim under Section 165 of the Motor Vehicles Act, 1988 against his own insurer for the damages caused to his own vehicle in the accident.

4.As rightly argued by the learned Standing Counsel for the appellant, the plain reading of Section 165 of the Motor Vehicles Act, 1988 would leave no doubt in the mind of the Court that claim petition under Section 165 of M.V.Act is maintainable only for the damages caused to the property of the third party and not to the damages caused to the vehicle insured. The same view is fortified by the Hon'ble Supreme Court and Division Bench of our High Court in the judgments above cited.

5.It is categorically held by the Hon'ble Supreme Court that the jurisdiction of the Claims Tribunal constituted under Section 165 of the Motor Vehicles Act, 1988 is restricted to third party property and not to the property of the insured. The Division Bench of our High Court has held that Section 165 of the Motor Vehicles Act, 1988 only relates to the property of the third party and it is not covered to the lost property carried in a public carrier held in trust by the carrier for the owners of the goods and it is the owner of the goods alone is entitled to claim compensation by filing a claim petition before the Tribunal. It is held so by following the earlier Division Bench Judgment of our High Court in the case of United India Insurance Company Limited Versus K.A.R.N.Janarthanam, 1988 ACJ 403 (Madras). That being the legal and factual position involved herein, the claim petition itself is not maintainable, whereas, the award passed by the Tribunal on mis-conception of facts and law is hence un-sustainable.

6.As the Claims Tribunal is held to have no jurisdiction to entertain and deal with the claim petition for compensation to the property of the insured, the award of compensation passed by the Tribunal is void ab initio and legally un-sustainable.

7.At this juncture, the learned counsel appearing for the respondent/ claimant would appeal this Court to give him the liberty to approach either the civil court or some forum to claim just compensation for the damages caused to his vehicle.

8.The learned Standing Counsel for the appellant would seriously oppose the same by drawing the attention of this Court to Ex.R1 which is purported to be the Assessment cum Processing sheet signed by Suveyor, Insurer, Insured cum Claimant and Workshop personnel of Sri Balaji Auto Works where the vehicle was repaired. As per the particulars contained therein, a sum of Rs.48,595.50 was spent for repairing the vehicle and the liability of the company and the insured was Rs.19,034.00 + Rs.29,561.50 and the sum of Rs.19,034.00 towards company's liability was already discharged by the company on behalf of the insured.

9. In my considered view, this Court having held that the claim petition is not maintainable under Section 165 of the Motor Vehicles Act, 1988 is not required to go into the claim on merits. As and when any claim is made before the appropriate authority, it is for the parties to contest the same on merits before the authority concerned.

10. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the impugned award on the ground of non-maintainability of the claim petition without prejudice to the right of the parties to approach appropriate authority for further claim if any, and to contest the same on merits. No costs. Consequently, the connected miscellaneous petition is also closed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

pri

To

1. The Motor Accidents Claims Tribunal,
Additional District Court
Fast Track Court,
Vellore.

2. The Section Officer,
V.R. Section,
High court, Madras.

+1 cc to Mr. C. Prabakaran, Advocate (sr. 40592)

+1 cc to Mr. N. Vijayaraghavan, Advocate (sr. 40733)

C.M.A. 284 of 2009
And
M.P.No.1 of 2009

TEJ(co)
cp 12/10/2015