IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CMA No.693 of 2003
and
C.M.P.No.5253 of 2003

Oriental Insurance Company Limited
160, Cherry Road, Post Box No.84
1 Floor, Salem - 1 .. Appellant/Respondent-2

Vs

1. M. Periathambi .. Respondent/Petitioner
2. K.P.Palani .. Respondent/1st Respondent
(Set exparte)

Appeal against the judgment and decree dated 21.12.2001 passed by the learned Motor Accident Claims Tribunal, Salem in MCOP No.280 of 1997.

For Appellant : Mr.S.Manohar
For R1 : Mr.G.Purushothaman

J U D G M E N T

The Oriental Insurance Company is the appellant.

2. The claimant/first respondent, who sustained grievous injuries in the accident that took place on 11.7.1996 has filed a claim petition before the Court below claiming a compensation in a sum of Rs.1,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.30,250/- with interest at the rate of 9% per annum from 26.3.1997 till 21.12.2001. Questioning the same, the present appeal has been filed by the Insurance Company.

3. Heard the learned counsel for the appellant-Insurance company and the learned counsel for the first respondent / claimant.

4. The learned counsel appearing for the appellant/Insurance Company would mainly contend that the policy was not in force on the date of accident. According to the learned counsel, originally third party insurance policy was obtained for the period 09.3.1995 to 08.3.1996 and thereafter, the policy was renewed only on 19.7.1996. But the accident took place on 11.7.1996 at 11.00 P.M. According to the learned counsel, the claimant has not produced the copy of the original policy and he has produced the collection receipt alone which clearly indicates that on the date of accident, the policy was not in force. Therefore, according to the learned counsel, the joint and several liability passed by the court below is wrong.

5. The learned counsel for the first respondent claimant would contend that the Court below, after taking into consideration the discrepancy of the non production of the policy, has clearly stated that only the demand was made on the 19.7.1996 and as typed set has been given to the claimant, the exact date has not been identified. The learned counsel for the first respondent /claimant would also contend that initially counter was filed admitting the liability as well as the accident. Thereafter, additional counter was filed to fill up the lacuna. The learned counsel also submitted that if at all, the Insurance Company at best can pay and recover the same from the original owner.

6. The second respondent, owner of the vehicle, was absent even in the Court below and ex parte order was only passed. Notice to the second respondent dispensed with.

7. Heard both sides and perused the materials available on record.

8. Interestingly, in this case, technical point has been raised by the appellant Insurance Company stating that there was no policy on the date of accident. On a perusal of the records, it appears that policy expired on 08.3.1996 and subsequently, the same has been renewed on 19.7.1996. The accident took place on 11.7.1996. According to the appellant, the claimant has not produced the copy of the policy and he has produced only the copy of the collection receipt. In the

collection receipt, date alone has been typed. Though it is stated by the appellant that they are having the carbon copy of the policy, the same has not been produced by them. Above all these things, in the first instance, the appellant insurance company admitted the liability in the counter. Later on, by virtue of this document, they deny the liability by filing the additional counter affidavit.

9. Unfortunately, the owner of the vehicle remain ex parte. Therefore, in these circumstances, though the original copy has not been produced, the benefit has to be given to the claimants as the Insurance Company has already admitted the liability in the counter. In view of the above, the compensation amount awarded by the Tribunal is confirmed and the interest alone is modified to 7.5% instead of 9% awarded by the Tribunal.

10. The appellant-Insurance company is directed to deposit the entire award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and the appellant Insurance Company is entitled to recover 40% of the award amount from the second respondent, namely, owner of the vehicle. The award will carry interest at the rate of 7.5% from the date of petition. On such deposit being made, the first respondent/claimant is entitled to withdraw the entire compensation amount along with interest on making out a proper application before the court below.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

1)The Motor Accident Claims Tribunal
Salem.

2)The Section Officer,
VR Section,
High Court,
Madras-104.

+1cc to Mr.G.Purushothaman, Advocate sr.53440
+1cc to Mr.S.Manohar, Advocate Sr.52742

CMA NO.693 of 2003

ca[co]
srg 17/11/2015