IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 09.11.2016)

DATED : 15.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1193 of 2001

The Divisional Manager,
United India Insurance Company Ltd.,
Office at No.24, Whites Road,
Chennai - 600 014. .. Appellant

.. Vs ..

1. P.A.Anburose

2. Raja .. Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 13.11.2000 made in M.C.O.P.No.35 of 1987 on the file of the Motor Accidents Claims Tribunal, (Principal Sub-ordinate Judge) at Chengalpattu.

For Appellant : M/s.Revathi Muralidharan

For R-1 : Served

For R-2 : Not ready in notice

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JUDGMENT

The civil miscellaneous appeal is directed against the judgment and decree dated 13.11.2000 made in M.C.O.P.No.35 of 1987 on the file of the Motor Accidents Claims Tribunal, (Principal Sub-ordinate Judge) at Chengalpattu.

2. On the application filed by the first respondent/claimant, the Tribunal, after considering the oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.6,000/- together with interest at 12% per annum from the date of petition till the date of deposit towards compensation to the claimant. Aggrieved against the said award passed by the Tribunal, the second respondent in the above M.C.O.P/insurance company had preferred this appeal before this Court.

3. The learned counsel for the appellant/insurance company would mainly contend that the Tribunal failed to note that on the date of accident i.e., on 24.02.1985, there was no valid subsisting policy covering the vehicle in question and hence, the appellant cannot be held liable for the compensation amount. It is further contended that even though insurance was taken, subsequently the insurance was not renewed and on the date of accident, there was no policy. But, the Tribunal, without considering the above fact, erroneously directed the appellant herein/insurance company to pay a sum of Rs.6,000/- to the claimant as compensation and hence, the award passed by the Tribunal has to be set aside and the civil miscellaneous appeal has to be allowed.

4. Even though notice was served on the first respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

5. This Court has considered the submissions made by the learned counsel appearing for the appellant and perused the entire records.

6. On reading of the entire evidence adduced on the side of the claimant, it is seen that the claimant has produced the documents Exs.P.1 to P.3 and except that, no other documents were produced. Further, it is admitted that the concerned vehicle was insured with the appellant/insurance company upto 18.03.1984. Subsequently, the vehicle was not insured with the appellant/insurance company. Even though the policy was valid till 18.03.1984, subsequently, the policy was not renewed by the owner of the vehicle. It is an admitted fact that the date of accident is on 24.02.1985. Since there is no document produced on the side of the claimant to prove the fact that on the date of accident, the vehicle was insured with the appellant/insurance company, it is for the claimant to take steps to prove the fact that the vehicle was insured with the appellant/insurance company or not. According to the appellant/insurance company, the vehicle was not insured with the appellant. Hence, the burden is on the claimant to prove the fact that the vehicle was insured with the appellant/insurance company on the particular date. Since it is not proved, this Court is of the considered view that the appellant/insurance company is not liable to pay compensation to the claimant and the claimant is entitled to claim compensation from the second respondent alone. The finding of the trial Court that since the vehicle was insured with the appellant/insurance company in the subsequent period, the burden is on the appellant/insurance company to prove the fact that the vehicle was not insured or not renewed with the appellant is not at all acceptable and that finding is liable to be set aside.

7. In view of this, this Court is of the considered view that the appeal has to be allowed and the order of the trial

Court has to be set aside.

8. In the result, the civil miscellaneous appeal is allowed in part. MCOP against the appellant/insurance company is dismissed. In other respects, the judgment and decree of the trial Court is confirmed. The second respondent herein alone is liable to pay compensation to the claimant.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Jrl

To

The Principal Sub-ordinate Judge,
The Motor Accidents Claims Tribunal,
Chengalpattu.

Judgment in
C.M.A.No.1193 of 2001

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