IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1472 of 2015
and
M.P.No.1 of 2015

The New India Assurance Company Ltd.,
No.77, First Avenue, Indira Nagar,
Adyar, Chennai - 600 020.
.. Appellant/2nd Respondent

/Vs/

1.R.Mari ..1st Respondent/Petitioner
2.R.Shanmugam
(Second respondent set exparte
in the lower court. Hence, notice
is dispensed with.) .. Respondent 2/Respondent1

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 30.09.2009 passed in M.C.O.P.No.992 of 2008 on the file of the Motor Accidents Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai).

For Appellant : Mr.R.Sivakumar

For Respondent No.1 : Mr.C.Munusamy

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the liability to pay compensation on the ground that the alleged vehicle was not involved in the accident at all.

2. The claim petition has been filed by one Mari, salesman in the Cottage Industries Exposition Ltd., earning a sum of Rs.10,010/- per month, aged 40 years, who suffered injuries in an accident on 12.10.2007.

3. It is the case of the claimant that the motor cycle bearing registration No. TN-07-AX-5584 was involved in the accident, in respect of which, J-3, Guindy Traffic

Investigation, Guindy, has registered a case in crime No.108/S1/2008 under Sections 279 and 337 IPC.

4. The Claims Tribunal has relied upon the evidence of the claimant, who examined himself as PW1, and copy of the first information report and charge sheet, which were marked as Ex.P4 and Ex.P5 respectively.

5. The learned counsel appearing for the appellant would submit that the owner of the vehicle is shown to be the brother-in-law of the injured and therefore, in all probability, there is every chance of vehicle being implanted for the purpose of shifting the burden on the shoulders of the insurance company.

6. The contention raised by the learned counsel for the insurance company appears to be probable but this Court has to find out whether the theory of false implication is probablised by the evidence placed on record.

7. A perusal of the award passed by the Claims Tribunal would go to show that the driver of the offending vehicle has appeared before the criminal Court and he has pleaded guilty and paid fine amount on 05.03.2007. It is settled proposition that admission is the best piece of evidence and when there is an admission of guilt and the same remains unchallenged, and not disputed as fraudulent it is binding upon the insurance company .

8. Moreover, when the claimant, who is stated to be an eyewitness, has been examined before the Claims Tribunal, the Insurance company should have adduced rebuttal evidence to show that the alleged vehicle was not involved in the accident. But, no rebuttal evidence has been let in on the side of the insurance company.

9. The learned counsel appearing for the appellant would point out that there was a delay of four months in the registration of the first information report, and that factor would probabilise the contention that there is every possibility of the vehicle being implanted in the first information report after deliberations. This contention also is normally acceptable but not in case of accident where the injured is in an disadvantageous position of getting himself treated first and thereafter, he has to think of prosecution. It is not known whether the delay has been explained before the criminal court or any other court. Even if there is contra evidence on the side of the respondent, this contention cannot be accepted at this distant point of time. Therefore, the finding that it is only this vehicle, which was involved in the accident, as determined by the Claims Tribunal cannot be interfered with in the absence of documentary evidence or oral evidence on the side of the insurance company.

Therefore, the award passed by the tribunal is confirmed and the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant/Insurance company is directed to deposit the entire award amount, along with interest and costs as ordered by the tribunal, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sms/kv

To
1.The Motor Accidents Claims Tribunal,
Chennai (In the II Court of Small Causes, Chennai).

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

+1cc to Mr.C.Munusamy,Advocate sr.49548

+1cc to Mr.R.Sivakumar,Advocate sr.49236

C.M.A.No.1472 of 2015 and
M.P.No.1 of 2015

sv1(co)
ss(13/9/2017)