IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA
C.M.A.No.2031 of 2017
and
C.M.P. No.10897 of 2017

The Divsional Manager,
The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.69, 70, Sheikpet Nadu Street,
Kancheepuram … Appellant

Versus

1.P.Munusamy
2.K.Ranganayagi
3. The Proprietor
Singavi Syndicate, No.36, Veerappan Street,
1st Floor, Sowcarpettai, Chennai - 79. … Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act,1988 against the Judgment and decree made in M.A.C.T.OP No.637 of 2001 on the file of the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court 2) at Kancheepuram, dated 8.6.2005

For Appellant : Mr.M.Krishnamoorthy

For Respondents: No appearance

JUDGMENT

This appeal has been filed by the Insurance Company challenging the liability to pay compensation of Rs.15,000/-, in respect of the claim petition filed by Munusamy.

2. The injured, Munusamy, aged 50, a watchman, earning a sum of Rs.4,000/- p.m. met with an accident on 05.04.2000. He filed the claim petition, claiming that the insurance company is liable to compensate him to the extent of Rs.75,000/-. The insurance company filed counter contending that at the time of accident, the vehicle which is said to be involved in the accident, was not insured with the insurance company / third respondent.

3. The Tribunal on consideration of the materials placed before it, came to the conclusion that the insurance company did not prove that the vehicle is not insured with the insurance

company at the relevant point of time and, therefore, the insurance company is liable to pay the compensation. Accordingly, the Tribunal quantified the compensation in a sum of Rs.15,000/-.

4. Learned counsel for the insurance company seriously contends that the Tribunal ought to have exonerated the insurance company, since the alleged vehicle bearing Registration No.TN01 M1042 (owned by the second respondent and hypothecated with the third respondent) that was involved in the accident, was not covered by a valid and effective policy of insurance, at the time of the accident. In other words, the contention is that the 2nd respondent, the owner of the vehicle alone is liable to pay the compensation and not the insurer.

5. The only question that needs to be decided by this Court is whether the alleged vehicle was covered by a valid insurance policy at the time of the accident so as to make the insurance company liable to pay the compensation.

6. It is the stand of the insurer that the alleged vehicle is not covered under any insurance policy issued by the insurer. Therefore, the insurer is not liable to pay the compensation. In order to appreciate the said contention, the evidence that has been brought on record needs to be looked into. The accident had occurred on 05.04.2000. Even though, the claim is made for a sum of Rs.75,000/-, however, the Tribunal has passed an award only for a meagre amount of Rs.15,000/-. The award itself was passed in the year 2005, i.e., more than a decade ago, i.e., on 08.06.2005.

7. The record reveals that though notices were sent by the insurance company calling upon the owner to produce the insurance details, however, the said notices have not been served upon the owner. In face, the notice issued by this Court has returned with an endorsement that parties are not available at the relevant addresses.

8. Be that as it may. At this juncture, it would be necessary to find out the reasoning which compelled the claims Tribunal to come to the conclusion that the burden of proof has not been discharged by the insurance company.

9. Though it is contended by the learned counsel for the appellant that the burden of proof rests with claimant to show that the alleged vehicle was insured with insurance company, it is to be pointed out that the nature of enquiry contemplated under the Motor Vehicles Act is slightly different and it does not follow the adversarial type of litigation. The language used in the Act is not trial, but enquiry. In the enquiry contemplated under the Act, duty is cast upon the Tribunal to ascertain whether the details furnished by the police officers by contains the necessary details or not. It may not be

practically possible for the claimants to find out the details of insurance. That is the reason the law insists upon the investigating agency to fill up the form prescribed under the Motor Vehicles Act and send it for enquiry to the Tribunal.

10. In such a backdrop, the onus rests with the investigating officer, who enquires into the cause of accident, to verify whether the alleged vehicle carried a valid insurance policy or not. In the case on hand, based on the details submitted by the investigating officer, the Tribunal has fastened the liability on the insurance company to compensate the injured. If the insurance company had any doubt regarding the validity of the policy, the insurance company, in all earnestness, should have chosen to examine the investigating police officer to show that the vehicle was not insured with them at the relevant point of time. However, the insurance company has not chosen to examine the investigating officer.

11. Coming back to the reasoning given by the Tribunal for fastening the liability on the insurer to pay the compensation, the Tribunal had considered the evidence adduced by R.W.1, who was an employee of the appellant and has rendered the following findings :

> 1) Even though the insurance company has addressed both the owners to produce the documents relating to the vehicle, that itself may not be sufficient to prove that the vehicle was not insured with them.
> 2) the evidence of RW1 that one Gnanasundarm enquired about the insurance coverage in the police station, is not sufficient.
> 3) The Registers in the possession of the appellant / insurance company showing that this particular vehicle was not insured with them, has not been produced.

12. On the above reasonings, the Tribunal has fastened the liability on the insurance company to compensate the claimant. This Court, having carefully considered the evidence available on record as also the reasoning given by the Tribunal to arrive at the finding, is of the considered view that the order passed by the Tribunal is fully justified. In the absence of any steps having been taken by the insurance company to examine the investigating police officers, mere calling upon the owner of the vehicle to produce the insurance policy would not discharge the burden from the shoulders of the insurance company and transfer the same to the shoulder of the claimant. The insurance company having not diligently pursued the matter by examining the necessary witnesses, cannot now claim that the liability fastened on them is not sustainable on the ground that the claimant has proved that the alleged vehicle was covered under a valid insurance policy.

13. For the reasons stated above, this Court is of the considered view that the the order passed by the Tribunal does not require any interference and the same needs to be confirmed.

14. In the result, the appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

15. 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, if any, already deposited, to the credit of the claim petition, 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/-
Assistant Registrar(CS-IC)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To
1. Motor Accidents Claims Tribunal
(Additional District Judge, Fast Track Court 2) at Kancheepuram.

2. The Section Officer, (2-coipes)
V.R. Section,
High Court, Madras - 104.

+ 1 cc to MR. Krishnamoorthy, Advocate sr.49848

C.M.A.No.2031 of 2017

MR(CO)
EU(02/03/2018)