IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1647 of 2006

M/s.Oriental Insurance Co. Ltd.,
R.V.K.Building,
First Floor,
54, Dhalli Road,
Udumalpet. .. Appellant/3rd Respondent

Vs.

1. Dhurairai ..1st Respondent/Claimant
2. Balamurugan ..2nd Respondent/1stRespondent
3. Matheswaran ..3rd Respondent/2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Fair and Decreetal order dated 12.07.2004 made in M.C.O.P.No.234 of 2000, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court, No.5, Tiruppur.

For Appellant : Mr.S.Janarthanam
For 1st Respondent : Mr.Ma.P.Thangavel
For 2nd Respondent : Served - No Appearance

JUDGMENT

The Insurance Company, arrayed as the 3rd respondent before the Tribunal, challenges its liability to pay compensation to the victim on the ground of want of policy of insurance for the vehicle in question.

2. On 13.10.1999 at about 6.30 p.m., a road accident that took place at Palladam road, Pollachi, a certain woman named Karungkanni, aged about 50 years suffered injuries and died when she was hit by an auto rickshaw while crossing a road, for which his son came forward with a claim of Rs.5,00,000/- before the Tribunal, where as the Tribunal has passed an award for Rs.1,38,000/- and directed the respondents to pay this amount to the petitioner jointly and severally with interest at 9% per annum. As against the award passed by the Tribunal, the Insurance Company has come forward with this appeal.

3. The learned counsel for the appellant submitted that the policy of the insurance was in force from 18.08.1998 to 17.08.1999 and 22.10.1999 to 21.10.2000. The accident however occasioned on 13.10.1999. Just some 10 days prior to the renewal of insurance, the accident had occurred. To put it differently and plainly, there was no policy cover for the autorickshaw in question on date of the accident. The Tribunal however, has held that inasmuch as the appellant has filed the petition under Section 170 of the Motor Vehicles Act seeking permission of the Court to defend the action on grounds available to the owner and driver of the vehicle in question, it must be presumed that the Insurance Company has not taken a defence of non-existence of valid policy for the vehicle in question. This reasoning of the Tribunal, is questioned by the appellant in this appeal.

4. Under Sec. 142 of Motor Vehicles Act, the Insurance Company is entitled to take only limited statutory defences, but under Sec.170 of the Act it can, with the leave of the Tribunal, take only such defences as are available to the insured (i) only where existed a policy and (ii) where the insured does not contest the claim. Inasmuch the insurance company has availed the benefit under Sec.170 of the MV Act, which is available to it only where there is an insurance cover, it is not now given to it to contend that there existed no valid policy. It is hence, the Tribunal has declined to entertain the contention of the appellant which this Court cannot consider faulty. In the end, there is no merit in the appeal, Hence, liable to be dismissed.

5. In the result, this Civil Miscellaneous Appeal is dismissed. The insurance company is directed to pay the entire award of compensation along with accrued interest, less if any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimants are entitled to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn

To

The Motor Accident Claims Tribunal
Additional District Court,
Fast Track Court, No.5,
Tiruppur.

+1 cc to M/s.Ma.P.Thangavel Advocate sr 55514

C.M.A.No.1647 of 2006

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