

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM : THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CMA.No.3635 of 2004
and CMP.No.19519 of 2004

The New India Assurance Co. Ltd.,
46, Moore Street,
Regina Mansion, Chennai -1. ...Appellant

Vs.

1.Kamaleswari
2.Muthupandian ...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MACTOP.No.2225 of 1998 on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes) at Chennai dated 19.12.2002.

For Appellant :Mr.M.Krishnamoorthy

For Respondents :No appearance

JUDGMENT

The Insurance Company which is arrayed as the second respondent before the Tribunal has challenged the award on the ground that there was no policy cover for the vehicle at the time when the accident took place.

2. On 17.10.1997 at about 8.45 hours, while the claimant was travelling as a pillion rider in a two wheeler and proceeding to MMDA Colony, he was hit by a van bearing registration No.TS-L-3507 from behind, owing to which the claimant had suffered injuries, for which she approached the Tribunal with a claim of Rs.80,000/-, against which the Tribunal has passed an award for Rs.35,000/-.

3. The only point argued before me by the Insurance Company was that the accident had taken place at 8.45 hours in the morning whereas the vehicle was insured with it from 10.30 hours, some two hours after the accident had occurred. He brought to the notice of the Court Ext.R-1, a copy of the policy which state in clear terms that the policy has come into effect from 10.30 a.m. on 17.10.1997. Inasmuch as there is no policy cover at the time of accident, the Insurance Company shall not be made liable, contended the counsel.

4. Before this Court first respondent was served with notice of appeal, but she did not enter appearance. The second respondent herein who is the first respondent before the Tribunal is the owner of the vehicle and he remained ex-parte before the Tribunal. Notice was also not served on him and notice to him is dispensed with. In the petition, the claimant has made a categorical statement that the accident had taken place at 8.45 hours on 17.10.1997 and Ext.R.1 shows that the vehicle was insured from 10.30 hours. The conclusion is only too easy to arrive that the Insurance Company is not liable and cannot be made liable for meeting the liability which the owner of the vehicle is under an obligation to meet.

5. In the result, this appeal is allowed but without costs. The claimant is permitted to proceed against the owner of the vehicle for realising the amount awarded by the Tribunal. If the Insurance Company had deposited the claim amount and it still remains with the Tribunal, it is permitted to withdraw the same. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds

To

The Motor Accidents Claims Tribunal,
V Judge, Court of Small Causes,
Chennai.

+ 1 cc to Mr.Krishnamoorthy, Advocate Sr.2322

CMA.No.3635 of 2004

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