BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD).No.211 of 2015

Mahalakshmi ... Appellant/Petitioner

Vs.

1.T.Elango

2.The Branch Manager,
New Indian Assurance Co.Ltd.,
No.161-A, East Veli Street,
Madurai - 625 001. ... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 29.11.2005, made in M.C.O.P.No.353 of 2002, on the file of Motor Accident Claims Tribunal (I Additional Sub Court), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : No Appearance
For R2 : Mrs.P.Malini

JUDGMENT

Heard the learned counsel on either side.

2.The claimant has filed this appeal questioning the impugned award on the ground that liability must have been fastened on the second respondent/Insurance company.

3.The claimant was walking on the road near Rayapalayam Vilakku Road on 11.02.2001, at about 11.00 a.m., when the taxi belonging to the first respondent herein hit her. In the resulting accident, the claimant suffered serious injuries including fracture on the hip. She, therefore, filed M.C.O.P.No.353 of 2002, on the file of the Motor Accident Claims Tribunal, (I Additional Sub Court), Madurai, claiming compensation.

4.The second respondent herein filed their statement of objections. The specific stand of the second respondent is that the offending vehicle enjoyed insurance coverage for the period from 22.03.2001 to 21.03.2002. In the present case, the accident took place on 11.02.2001, that is prior to the policy coverage.

Therefore, the second respondent contended that, no liability can be fastened on them. The Tribunal accepted the said defence projected by the insurer. The insurer was exonerated and awarded a sum of Rs.93,000/- as compensation and the vehicle owner was directed to satisfy the same. Contending that the insurer ought not to have been exonerated, this appeal has been filed.

5.The learned counsel appearing for the appellant contended that the second respondent had marked Ex.R1 dated 02.04.2001. It is the insurance policy issued by the second respondent in favour of the offending vehicle, but for the period subsequent to the accident. The learned counsel for the appellant drew my attention to the fact that there are certain overwritings found on the policy and this arouses the suspicion as to its contents.

6.I went through the said exhibit and it is true that there are some over writings. But, the fact remains that the policy is only in respect of the period from 22.03.2001 to 21.03.2002. There is nothing on record to show that on the date of the accident, the second respondent had insured the offending vehicle. The learned counsel for the second respondent stated that they had issued notice to the first respondent calling upon him to produce the copy of the insurance policy, if, any. But, there was no response from the vehicle owner even after receipt of such communication. The second respondent had examined their official as R.W.1.

7.The learned counsel for the appellant would contend that the second respondent did not mark the copy of the communication sent by them to the vehicle owner or the Acknowledgement Card. In this regard, he would place reliance on the decision reported in *2012 (1) TNMAC 697 (New India Insurance Company Vs. Madhammal and others)* In the said case, this Court after noticing that the insurer did not examine any witness on their behalf to rebut the case of the claimants and without taking any steps to verify the particulars furnished by the claimant cannot shift the burden entirely on the claimants.

8.Per contra, the learned counsel appearing for the second respondent would place reliance on two decisions of this Court reported in *2014 (1) TNMAC 77 (Divisional Manager, New India Assurance Company Ltd Vs.Kasiammal and others) and 2017 ACJ 1212 (Oriental Insurance Company Ltd. Vs. R.Mahendran and another).* The ratio laid down in the aforesaid said decisions is that the burden lies only on the claimant to prove that the offending vehicle enjoyed policy coverage on the date of the accident and that the policy was issued by the insurer in question.

9.This Court is of the view that the second respondent herein cannot be called upon to prove the negative. The specific defence taken by the second respondent herein is that on the date of accident, the offending vehicle was not insured with them. It is not possible for the second respondent to say anything more than or beyond this. Unlike the insurer concerned in the decision reported in *2012 (1) TNMAC 697 (New India Insurance Company Vs. Madhammal and others)*, in the present case, the insurer had examined their official as R.W.1. The said witness had specifically deposed that notice was issued to the vehicle owner and that the vehicle owner even after receiving the communication did not respond. This stand of the said witness was not challenged in the cross-examination. Therefore, even though the said communication or the Acknowledgement Card was not marked by the insurer, it would not make any difference in this case. The claimant had also not taken out any interrogatives to find out any particulars. The role of the insurer is only to indemnify the insured. In this case, the vehicle owner has chosen to remain exparte. Therefore, the Tribunal rightly imposed the entire liability on him of there was insurance coverage during the relevant time, the liability can be fastened on the insurer. In this case, there is absolutely nothing on record to make the insurer liable. Therefore, the award of the Tribunal exonerating the second respondent stands confirmed.

10.Coming to quantum, it is seen that the claimant had suffered fracture in the hip. She had suffered 28% disability. But the Tribunal, has awarded a sum of Rs.25,000/- only for disability. The Tribunal awarded a sum of Rs.93,000/- alone as compensation, This is clearly inadequate. The compensation payable to the claimant will have to be reworked as under:-

Sl.No	Heads	Amount in Rupees
1.	For disability	Rs. 84,000/-
2.	For medical expenses	Rs. 28,000/-
3.	For pain and suffering	Rs. 50,000/-
4.	For extra nourishment	Rs. 10,000/-
5.	For loss of amenities	Rs. 10,000/-
6.	For transportation	Rs. 3,000/-
7.	For attender charges	Rs. 2,000/-
	Total	Rs.1,87,000/-

11.The compensation awarded by the Tribunal is enhanced from Rs.93,000/- to Rs.1,87,000/-. The award dated 29.11.2005, made in M.C.O.P.No.353 of 2002, on the file of Motor Accident Claims Tribunal (I Additional Sub Court), Madurai, Tribunal, is modified accordingly.

12.The first respondent is liable to pay the said compensation amount of Rs.1,87,000/- with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit the claimant is entitled to withdraw the entire amount, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.

14.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
1.The I Additional Sub Judge,
The Motor Accident Claims Tribunal
(I Additional Sub Court), Madurai.

2.T.Elango,
S/o.Diraviyam,
No.1/44, Mathur,
Madurai District.

Copy to:
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(**2 Copies**)

+1cc to Mr.P.MALINI,Advocate,SR.91158
+1cc to Mr.S.SRINIVASA RAGHAVAN,Advocate,SR. 91028

C.M.A.(MD).No.211 of 2015
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