BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.329 of 2016

The Divisional Manager,
New India Assurance Company Limited
Door No.248-B, Kamarajar Salai,
Madurai - 625 009. ... Appellant/2nd Respondent

Vs.

1.Mohamed Rafiq ... 1st Respondent/Petitioner

2.P.Marimuthu ...2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.930 of 2014 dated 07.01.2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court for MCOP Cases, Madurai.

For Appellant : Mr.J.S.Murali
Respondents : Mr.R.Anand

JUDGMENT

The Insurance Company has filed this appeal questioning the impugned award on the ground of liability.

2.The first respondent herein was riding a two wheeler. An Eicher lorry belonging to the second respondent was driven in a rash and negligent manner and it dashed against the said two wheeler on 20.11.2013. The first respondent suffered injuries in the said accident. He filed M.C.O.P.No.930 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court for MCOP Cases, Madurai. This Court went through the original claim petition. It had been handwritten in the first page of the claim petition that the offending lorry had policy bearing No.72030331110100007782 with effect from 03.01.2013 to 02.01.2014. The accident in question took place on 20.11.2013. The said policy was also marked as Ex.R2 by the appellant insurance company before the Tribunal. The Tribunal passed an award for a sum of Rs.1,30,000/- in favour of the claimant. The insurance company challenges the said award on the ground that a mere look at Ex.R2 would show that the policy was for the previous year i.e. from 03.01.2012 to 02.01.2013. In other words, on the date of accident i.e. on 20.11.2013, the policy was not in force. Only if the policy is in force, the appellant insurance company should have been fastened with the liability.

3.It is true, as contended by the learned counsel for the claimant that the objection as regards the policy not being in force was not taken before the Tribunal. This inadvertent error on the part of the appellant cannot be taken advantage by the claimant. The appellant insurance company can be fastened with the liability only and if only the policy covering the offending vehicle was in force on the date of accident. It is beyond dispute that the policy issued by the appellant insurance company in favour of the offending vehicle had already lapsed and expired.

4.Therefore, the award dated 07.01.2016 made in M.C.O.P.No.930 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court for MCOP Cases, Madurai is modified. Of course, the claimant will be at liberty to proceed against the vehicle owner for enforcing the award against him. The appellant insurance company is exonerated. It is submitted by the learned counsel for the appellant that insurance company has already deposited the entire amount. Therefore, the appellant insurance company is permitted to withdraw the same before the Tribunal.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Special Sub Court for MCOP Cases, Madurai.

2. The Record Keeper, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+ 1 cc TO Mr.C.Godwin , Advocate in SR No. 88874
+ 1 cc TO Mr.J.S.Murali , Advocate in SR No. 88978

Arul
AE/SKN RSK/SAR3/19.03.2018/2P/6C

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