BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A.(MD)No.797 of 2015
and
M.P.(MD).No.1 of 2015
and
C.M.P.(MD).Nos.10356 and 11116 of 2017

Kanagaraj ... Appellant

Vs.

1. Siva @ Sivabalan
2. The Divisional Manager,
   Tata AIG General Insurance Company Limited,
   9th Floor, Nicholas Piramal Towers,
   Lowerparel, Mumbai. ... Respondents

Prayer: Appeal filed under Section 173 of M.V.Act, 1988, to set aside the award and decree dated 07.01.2015 made in M.C.O.P.No.702 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli.

For Appellant : Mrs.Hema Sampath
Senior Counsel for
Mr.R.Subramanian
For Respondents : Mr.S.Srinivasa Raghavan for R2
: No Appearance for R1

JUDGMENT

Heard the learned counsel on either side.

2.One Siva @ Siva balan, was riding his two wheeler on 14.5.2013 at about 17.00 hours in Neelpuram Vallivilai Road, when the Mahendra van belonging to the appellant namely, kanagaraj, dashed against the two wheeler. In the resulting accident, the claimant suffered injuries all over the body. Crime No.57 of 2013, was registered, against the appellant Kanagaraj, on the file of the Kuramboor Police Station. The claimant took treatment for over two weeks in the hospital. He spent a sum of Rs.2,00,000/- towards treatment. The Tribunal awarded a sum of Rs.6,43,200/- with interest.

3.The appellant was directed to satisfy the award and the second respondent insurer was totally exonerated by the Tribunal. This appeal has been filed by the vehicle owner, questioning that the impugned award dated 07.01.2015, made in M.C.O.P.No.702 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli, both on the ground of liability as well as quantum.

4.The learned Senior Counsel appearing for the appellant would strongly contend that the vehicle was insured only with the Tata AIG General Insurance Limited and that the Tribunal erred in exonerating the said insurer. The appellant has taken out C.M.P.No.10356 of 2017, for receiving the additional documents. A mere look at the said additional documents would reveal that the appellant had insured the vehicle in a question with the Tata AIG General Insurance Limited in the year 2011-2012. The case of the appellant is that for the year 2012-2013, it was the second respondent who had actually insured the vehicle. The learned Senior counsel would further contend that the second respondent must be fastened with the liability to satisfy the award.

5.The claimant filed M.C.O.P.No.702 of 2013 and he had made Tata AIG General Insurance Limited as a party respondent. The appellant herein was shown as the first respondent. The counter filed by the first respondent is enclosed in the typed set of papers. I carefully went through the same. The appellant had stated that the vehicle in question was insured with the second respondent herein. But the second respondent filed a counter specifically contending that the vehicle was not insured with them at the time of the accident. In paragraph 2 of their counter, the insurer had pleaded that there was no valid policy for the said vehicle with them and that as per their office records the appellant had only insured the vehicle for the period from 13.10.2010 to 29.10.2011. When the second respondent had specifically alleged that the policy relied on by the claimant and the owner of the vehicle is a fake one, a duty was cast on the vehicle owner to file his replication. In this case, there was no such pleading by way of replication. The vehicle owner ought to have named the person to whom the policy premium was remitted. If that person was the agent of the insurer, then the insurer can be made vicariously liable. In this case, such details are totally absent. The vehicle owner/appellant herein failed to challenge the allegation of the insurer that the policy relied on by him is a fake policy. The said policy was marked as Ex.R2.

6.A mere look at the contents of the policy would show that even the name of the agent was not mentioned therein. The agent code column was left blank. Therefore, there is nothing on record to make the insurer vicariously liable. It is obvious that the appellant had been cheated. It emerges from the records that the appellant had validly insured his vehicle during the year 2010-2011 and again for the year 2011-2012. But we are now concerned that the policy for the year 2012-2013. When the appellant is not in a position to establish that the policy was issued by the agent/broker of the second respondent herein, there is no principle of law by which constructive liability can be fastened on the insurer. Therefore, the Tribunal rightly exonerated the second respondent herein. I do not find any reason to interfere with the said order. The award of the Tribunal exonerating the second respondent herein stands confirmed.

7.Coming to quantum it is seen that a sum of Rs.6,43,200/- was awarded to the claimant. The learned Senior counsel would point out that there was no justification in awarding a sum of Rs.2,00,000/- towards loss of amenities. The claimant had suffered head injuries in this case. The doctor has assessed his disability at 50%. Therefore a sum of Rs.1,50,000/- was awarded. The Tribunal has observed that the claimant was able to understand the questions and to give his considered response. The replies are clear. Therefore, one can come to the conclusion that there was no justification in awarding a sum of Rs.2,00,000/- towards loss of amenities. Quantum of compensation awarded to the claimant is from Rs.6,43,200/- to Rs.4,43,200/-. Excepting this in all other heads the award of the Tribunal stands confirmed. The Tribunal has also awarding interest at the rate of 9%. This is to be reduced to 7.5% . The matter cannot raised there.

8.It is obvious that the appellant is a victim of white collar crime. The Police Inspector Mr.Thangakrishnan of the Kurumboor Police Station was examined as RW3. He admitted that Ex.R.7 was received by the police complaining about the instant act of cheating. It appears that there was no further progress in the enquiry. If a policy in the name of the second respondent was issued, the second respondent cannot take it lightly. It is the duty of the second respondent to extend their fullest cooperation with the police as well as the claimant to get the truth. I therefore direct the Inspector of Police, Kuramboor Police Station, Tuticorin District, to take up the investigation by registering an FIR. First Information Report shall be registered within one week from the date of receipt of a copy of this judgment. The investigation shall be expeditiously conduct by enquiring all the concerned persons and final report shall be filed within three months thereafter. The Superintendent of Police is directed to monitor the investigation. Such direction is issued because the learned Senior counsel informs that quite a few such fake insurance policies appear to have been issued.

9.Therefore, the award dated 07.01.2015, made in M.C.O.P.No.702 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli, is modified accordingly.

10.The appellant is directed to deposit the compensation amount of Rs.4,43,200/- with interest at the rate of 7.5% per annum with costs to the credit of M.C.O.P.No.702 of 2013, dated 07.01.2015, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli, 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 first respondent/claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal. The appellant is permitted to withdraw the remaining amount, if any.

11.This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Special Sub Judge,
   The Motor Accident Claims Tribunal, Tirunelveli.

2. The Superintendent of Police, Tuticorin District.

3. The Inspector of Police,
   Kurumboor Police Station,
   Tuticorin District.

4. Siva @ Sivabalan,
   No.22, Ram Nagar,
   N.G.O. Colony,
   Tirunelveli-7

Copy to

The Record Keeper,
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Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Subramanian, Advocate Sr.No.92008
+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.92069

TSG

VB/SV/MMS/SAR2/23.05.2018/4P/9C

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