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IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 10.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.654 of 2007

Oilwell represented by sole proprietor
Sadiq Mohammed Sait .. Appellant/Petitioner

Versus

1.Sancheti Motors Limited

2. Oriental Insurance Company Limited
669, Anna Salai,
Chennai - 600 006. .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of M.V. Act 1988, against the common judgment and decree in MCOP.No.3278 of 1995 dated 12.04.2006 on the file of the VI Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr.S.Alex Raj

For Respondents: Mr.S.Arunkumar for R2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/petitioner against the order of the Tribunal passed in MCOP No.3278 of 1985 on the file of the VI Judge, Motor Claims Tribunal, Small Causes Court, Chennai.

2. The brief facts leading to the claim application is that on 23.07.1994 at about 10.30 a.m., while the petitioner's/ appellant vehicle bearing Registration No.TMT 5898 (Standard 20 Van) was driven slowly and proceeding from North to South on the left side of the road, at that time, the Ambassadar Car bearing Registration No.TMK 4110 belonging to the first respondent coming in the opposite direction and driven in a rash and negligent manner, hit against the appellant's vehicle which resulted in damage to the appellant's vehicle. Therefore, the appellant filed a claim petition before the Tribunal, claiming a sum of Rs.81,900/- as compensation for the damages caused to the vehicle.

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3. The second respondent, the insurer of the vehicle belonging to the 1st respondent, filed counter statement denying the said incident as false and baseless and further submitted that no policy was issued by the insurance company. Therefore, while questioning the liability of the insurer to compensate the appellant, alternative plea of excessive claim has also been raised by the 2nd respondent.

4. The Tribunal after analaysing the facts, evidence and documents placed before it, has given a finding that the ownership of the vehicle has not been proved and in the absence of the establishment of ownership, the claim made by the petitioner/appellant herein cannot be maintained and dismissed the claim application. Aggrieved by the said order, the claimant has preferred the appeal.

5. It is the contention of the appellant that the Tribunal ought to have considered statement of PWs - Mechanic, who deposed the damages caused to the vehicle. Though the bills for the said repair work have been produced before the Tribunal, the same have not been properly considered. It is further submitted that subsequent to the repair, the vehicle has been sold to another person, which has been proved by Ex. P5. This aspect also not properly appreciated by the Tribunal.

6. It is the further contention of the appellant that ownership has been defined under Section 2 of the Motor Vehicles Act, which reads as under :-

> "2. (30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement".

7. The Tribunal has not considered the materials in proper perspective and the claim has been dismissed without considering the materials on record and the said finding deserves to be set aside.

8. This Court heard the learned counsel appearing on either side and perused the materials available on record.

9. On perusal of records and documents placed before the Tribunal, it is very well observed that the claimant is the tortfeasor and the tortfeasor's vehicle is covered by Ex. R3, which is Trade Certificate i.e. TC 2094. It is also seen that the Tribunal has observed that PW1, who is the claimant, has

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not produced any evidence to show that he is the Proprietor of the appellant's concern and he is owning the van bearing Registration No.TMT 5898. Further, the Tribunal has held that Ex. R1, is the copy of the certificate of Insurance given in favour of the first respondent. The description of vehicle given in Ex. R1 shows that this certificate of insurance covers "Any motor vehicle the property of the insured or in his custody or control whilst bearing trade certificate number. All steam driven vehicles are excluded". Moreover, the use of the vehicle is limited only for motor trade purposes. The policy does not cover use for hire or reward or for organised racing pace making reliability trials or speed testing. Thus, it is clear from Ex. R.1 that any vehicle covered by this certificate of insurance must bear the trade certificate number TN 01 / TC 209A while being in use. However, the tortfeasor vehicle bearing registration number TMK 4110 at the time of the accident.

10. From the above, it is clear that the vehicle should have been used for motor trade purpose and not for the purpose of carrying spare parts, which is not covered by the Trade Certificate, as the same is not the come under the motor insurance policy. The Tribunal has taken all the above into consideration and has given a finding that the respondents are not liable to pay compensation to the petitioner / appellant. As the finding of the Tribunal is based on the document and evidence and no discrepancy is found in the said finding, this Court confirms the order of the Tribunal.

11. In view of the above, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

vsi2

To

1. The VI Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.

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+1cc to Mr.A.Shanmugaraj, Advocate SR.No.70215

+1cc to Mr.S.Arunkumar, Advocate SR.No.71307

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GMY(15/10/2019)

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