IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.3681 of 2006
and CMP.No.10878 of 2006

Branch Manager,
The Oriental Insurance Co.Ltd.,
Thiruvarur. ..Appellant/2nd Respondent

Vs.

1.Rajendran (Unconcious state)
Rep.by his wife Rajeswari ..1st Respondent/Petitioner

2.Shanmuga Sundaram ..2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 23.12.2004 made in M.C.O.P.No.44 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Nagapattinam.

For Appellant : Mr.S.Arun Kumar
For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree passed in MCOP.No.44/2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Nagapattinam.

2.The brief facts in the claim application are as follows:-

On 31.08.2000, at about 6.00 am, the petitioner was proceeding in a motor cycle from East to West, at that time, the lorry belongs to first respondent bearing Registration No.TH.Z.6189 was driven in a rash and negligent manner, lost his control and dashed against the petitioner and his motor cycle, without noticing the petitioner, who had stopped his vehicle on the left side. Thereby, the petitioner sustained severe injuries all over the body. He was also given treatment in various hospital for the disability and loss of income, he claimed a sum of Rs.7,00,000/- as compensation. The Kariyapattinam police station has also registered a case in Crime No.300/2000 under Sections 279 and 338 against the driver of the lorry.

3.The respondent in the counter statement has denied the accident and further denied the liability, since there was no effective policy existed on the date of the accident. Therefore, there was no policy of contract between the Insurance Company and the first respondent.

4.The tribunal after analyzing the evidence and documents placed before the same, has concluded that the driver of the lorry bearing Registration No.TH.Z.6189 is responsible for the accident for rash and negligent driving and awarded a compensation of Rs.7,00,000/- and directed the first and second respondent to pay the said compensation jointly and severally.

5.Aggrieved by the said liability, the Insurance Company has prayed this appeal to set aside the same.

6.On perusal of Ex.P1 FIR and the evidence P.W.2 Ravishankar are eyewitnesses to the accident. There is no doubt that the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TH.Z.6189 and no contra evidence was placed by the respondents to deny the accident. But, the only question is the Insurance Company/appellant herein is liable for the said accident or not. However, the Tribunal has given a reason that the Insurance Company is liable to pay compensation based on the case as argued by the claimant which is reported in *1998 (1) MLJ (SCC) 78.*

7.To substantiate the claim made by the claimant, he has produced documents and the same was marked as Exs.P2 to P18. The Tribunal after analysing all these documents has awarded the compensation of Rs.7,00,000/-. The Tribunal has also observed that the petitioner is only a 3rd party and he may not aware of the contract between the owner and respondent/Insurance Company. Hence, the Tribunal has fixed the liability on the Insurance Company. Aggrieved against the same, the Insurance Company has preferred this appeal.

8.It is argued by the appellant that the first respondent is the owner of the vehicle and he has issued a cheque towards premium for issue of policy for the vehicle bearing Registration No.TH.Z.6189. The respondent also presented the same for collection but it was returned as “Insufficient Funds”. Since the premium was not collected, the policy was cancelled. The cancellation of the policy was also intimated to the first respondent on 22.05.2000 itself. But even after the intimation regarding the cancellation of policy, the first respondent has not turned up to pay the premium amount. Hence, it is argued by the appellant that there is no contract between the first respondent owner and Insurance Company as on date of the accident. Hence, the Insurance Company has no liability as the compensation awarded by the Tribunal.

9.In view of the arguments advanced by the appellant and also the fact that the policy was cancelled by the Insurance Company even before the occurrence of the accident i.e., on 22.05.2000, and the owner of the vehicle has no need the premium to activate the policy, this Court is of the considered view that the appellant is not liable to pay compensation, as he has no contract with the owner of the vehicle and who willfully defaulter in paying the premium for his vehicle, even after the proper notice sent by the Insurance Company.

10.Under these circumstances, this Court inclined to hold that the appellant cannot be made liable. The Tribunal has passed an award not only against the appellant herein but also against the second respondent. The second respondent herein had not chosen to come up on appeal. It is evident from the records that he had wilfully failed to pay the premium even after receiving the notice from the Insurance Company. Therefore, in all fairness, the award passed by the Tribunal is accordingly modified. The same is set aside insofar as the appellant is concerned. The appellant is exonerated. The claimant is entitled to proceed against the second respondent herein for enforcing the award. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Nagapattinam.

Copy To: The Section Officer, V.R.Section, High Court of Madras

+1 cc to Mr.S.Arun Kumar, Advocate Sr.No.74974

AKM/14.09.19/3P-4C / CMA.No.3681 of 2006