IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1878 of 2015
and
M.P.No.1 of 2015

The New India Assurance Co. Ltd.,
No.1, Bharathi Road,
Arcot Woodlands Building,
Cuddalore. .. Appellant/2nd Respondent

Vs.

1.S.Kaliyaperumal
2.K.Arumugam
3.A.Ezhumalai ..1st Respondents/Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.2076 of 2008, dated 19.02.2015, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.K.Murugesan (for R1 to R3)
Legal Aid Counsel

JUDGMENT

The appellant is the New India Assurance Company Limited, filed this Civil Miscellaneous Appeal questioning the liability fastened on them and the order of pay and recovery made in MCOP.No.2076 of 2008 dated 19.02.2015 on file of the Motor Accident Claims Tribunal (IInd Additional Sub Judge), Cuddalore.

2.It is the case of the 1st respondent/petitioner that on 26.05.2008 when he was riding is Motor Cycle at Anna Bridge Road, Cuddalore, the motor cycle driven by the 3rd respondent herein in a rash and negligent manner dashed against the 1st respondent herein and in the result he sustained grievous injuries. Immediately thereafter he was admitted in the Government Hospital, Cuddalore for treatment. In the said accident he was suffered with permanent liability. Hence, he filed claim petition in MCOP.No.2076 of 2008, claimed compensation of Rs.5,00,000/-.

3.The appellant/2nd respondent Insurance Company filed counter statement contending that at the time of accident the 1st respondent vehicle was not insured with the appellant Insurance Company. But the 1st respondent by suppressing the accident has taken insurance policy for his vehicle bearing Registration No. TN-31-H-9331 from the appellant Insurance Company for the period from 28.05.2008 to 27.05.2009 and thereafter he produced his vehicle for Motor Vehicle Inspection. Since the 1st respondent vehicle was not insured with the appellant insurance company at the time of accident, the appellant insurance company is not liable to indemnify the 1st respondent.

4.Before the Tribunal below, on the side of the 1st respondent herein/petitioner filed Exs-P1 to P6 and the petitioner was examined himself as PW1 and one Dr.Venugopal was examined as PW2. On the side of the appellant insurance company one Mr.Ulaganthan was examined as RW-1 and Exs-R1 to R4 were marked.

5.Considering oral and documentary evidence adduced on either side, the tribunal below has come to the conclusion that the appellant insurance company is liable to indemnify the claimant/1st respondent herein and awarded compensation of Rs.4,75,000/- with interest at the rate of 7.5% per annum. The Tribunal below also directed appellant insurance company to pay compensation amount to the claimant and to recover the same from the respondents 2 and 3 herein. The said order is under challenge in this Civil Miscellaneous Appeal.

6.I heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.K.Murugesan, learned Legal Aid Counsel for the respondents and the entire materials available on record are perused.

7.In this case the only question is to be decided by this Court is whether the Tribunal below is right in directing the Appellant Insurance Company to pay the compensation amount to the claimant and to recover the same from the owner of the vehicle when the vehicle is not insured with the appellant insurance company at the time of accident?

8.The first and foremost submission of the Learned Counsel for appellant is that when the 2nd respondent herein has not insured his vehicle with the appellant insurance company and when there is no coverage of insurance for the vehicle of the 2nd respondent herein at the time of accident, fastening liability on the insurance company by the tribunal is not justified. It is further contented that when the appellant insurance company marked the Insurance Policy of the appending and defending vehicle as Exs-R1 and R2 and in which it is clearly established that the 2nd respondent's vehicle bearing Registration Number TN-31-H-9331 was having insurance coverage for the period only from 28.05.2008 to 27.05.2009 i.e., after the date of accident. Therefore the contention of the learned counsel for the appellant that Tribunal below ought not to have fixed liability to pay compensation on the appellant insurance company is having legal force in the considered opinion of this Court.

9.The Tribunal below has ordered pay and recovery by placing reliance upon the decision of the Hon'ble Apex Court reported in 2011 ACJ 926 (SC), wherein it is held that where there is violation of the policy condition or driving license, then the Insurance company could be directed to pay and recover the same from the owner. There is no quarrel over the said proposition of law laid down by the Hon'ble Apex Court. But in the case on hand, the question of violation of driving license or policy condition does not arise. The order of pay and recovery could be made only when there is a violation of policy condition. But in the case on hand there is no violation of policy condition and hence the order of the tribunal below in directing the appellant insurance company to pay the award amount to the claimant and to recover the same from the owner of the vehicle i.e., the 2nd respondent herein is improper and unreasonable and hence the is same is liable to be set aside.

10.Apart from that the appellant insurance company has clearly established the fact that the 2nd respondent vehicle is not having insurance policy on the date of accident i.e., on 26.05.2008 by marking Exs-R1 and R2 and so in the opinion of this Court the insurance company is not liable to indemnify the 2nd respondent's vehicle which caused accident. Therefore the above issue is answered in favour of the appellant insurance company.

11.As the appellant insurance company has filed this appeal only on the ground of liability, this Court has not gone into the issue of quantum of compensation arrived at by the tribunal and the same is confirmed in favour of the 1st respondent/claimant.

12.In view of the discussion made above I am inclined to allow this civil miscellaneous appeal, accordingly it is allowed.

13.In the result:

(a)This Civil Miscellaneous Appeal is allowed and the order and decree made in MCOP.No.2076 of 2008 dated 19.02.2015 on the file of the Motor Accident Claims Tribunal (2nd Additional Sub Judge), Cuddalore is set aside in respect of liability in fastening the appellant insurance company to pay the compensation alone and in all other respect the order of the tribunal below is confirmed;

(b) The respondents 2 and 3 herein are directed to pay the compensation amount as ordered by the Tribunal to the 1st respondent herein / petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(c) The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Mr.K.Murugesan, learned Legal Aid Advocate.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal,
II Additional Subordinate Court,
Cuddalore.

2. The Legal Aid Authority,
Chennai.

Copy To:

The Section Officer,
V.R.Section, High Court,
Chennai.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.65160
+1cc to Mr.K.Murugesan, Advocate, S.R.No.64484
+1cc to the Government Pleader, S.R.No.

C.M.A.No.1878 of 2015
and
M.P.No.1 of 2015

AD(CO)

rrs 06/02/2019