IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2766 of 2016

M/s.United India Insurance Co. Ltd.,
No.134, Silingi Building,
Greams Road, Chennai. ... Appellant/2nd Respondent

..vs..

1.V.Mohan
2.N.Ganesh ... Respondents/Petitioner/1st respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.06.2016 made in MCOP.No.2440 of 2013 on the file of the Motor Accident Claims Tribunal,III Judge, Small Causes Court, Chennai.

For Appellant : Ms.R.Rathna Thara

For Respondents : Mr.K.Varada Kamaraj for R-1
R2-exparte in Tribunal

JUDGMENT

Being aggrieved over the finding of the Tribunal dated 03.06.2016 made in MCOP.No.2440 of 2013 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai, the second respondent-Insurance Company has come forward with this civil miscellaneous appeal to set aside the award passed by the Tribunal.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 05.03.2013 at about 10.30 p.m., when the petitioner was proceeding in his Motor Cycle bearing Registration No.TN-22-H-2580, in the First Main Road, opposite to Palavanthangal Bajaj Showroom, the Auto bearing Registration No.TN-22-L-2552 belonging to the first

respondent and insured with the second respondent-Insurance Company, came at high speed in the opposite direction and dashed against the motor cycle in which the petitioner was travelling resulting in severe head injures and multiple injuries all over his body. The negligence of the Auto driver alone caused the accident. At the time of accident, the petitioner was aged about 50 years and was employed under Tamil Nadu Police as Head Constable earning a sum of Rs.25,000/- per month. Due to the injuries suffered by him, he is not able to attend to his work normally. Hence, the petitioner sought for compensation of Rs.6,00,000/- from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance Company filed a detailed counter stating that the claim of the petitioner about the nature and manner in which the accident occurred is not correct. The petitioner has to prove the place, date and time of the accident. The petitioner is also to establish that the first respondent auto was involved in the accident and the auto was insured with the second respondent-Insurance Company. The claim of the petitioner in all aspects is very high. The petition is devoid of merits. Thus, the respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and Medical Expert was examined as P.W.2 and produced Ex.P1 to Ex.P9 documents to prove his claim. On the side of the respondents, the respondent examined R.W.1 and produced Ex.R1 to Ex.R4 to substantiate their claim.

6. After considering the available materials on record, the Tribunal found that the negligence of the first respondent driver alone caused the accident and directed the respondents to pay the award amount of Rs.1,75,100/- as compensation to the petitioner. Being aggrieved over the finding of the Tribunal, the second respondent Insurance Company has come forward with this present appeal to set aside the award passed by the Tribunal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent and perused the materials available on record.

8. The learned counsel appearing for the second respondent/ Insurance Company contends that the award passed by the Tribunal is very high and excessive. As the driver of the insured vehicle was not authorised to drive the public auto and as the same is violation of policy condition, the second respondent Insurance Company is not liable to pay any compensation. As Ex.R4 driving licence of the driver of the auto is granted for 20 years, he is authorised to drive the private LMV only and not commercial vehicle. The Tribunal failed to take into consideration that

the licence to drive the commercial vehicle is issued only for three years and as Ex.P4 driving licence is issued for 20 years, the same is meant only for driving private LMV vehicle. The other reasons stated by the Tribunal is not proper. Hence, the respondent Insurance Company seeks to entertain the appeal.

9. The learned counsel appearing for the petitioner/claimant contends that on the basis of the available material on record, the Tribunal has come to the correct conclusion and the amount awarded as compensation is just and proper. The same needs no interference. Hence, the petitioner seek dismissal of the appeal.

10. The accident is not disputed by the respondents. Similarly, the Auto bearing Registration No.TN-22-L-2552 belongs to the first respondent is also admitted. The petitioner who deposed as P.W.1 clearly stated about the rash and negligent manner in which the first respondent vehicle was driven by its driver at the time of the accident. Apart from that, Pallavaram Traffic Police also registered Ex.P1 First Information Report registered against the driver of the auto. In the absence of any contra evidence on the side of the respondents to contradict the claim of the petitioner, on the basis of P.W.1 evidence and Ex.P1 first information report, it is apparent that the negligence of the first respondent driver alone resulted in the accident.

11. The petitioner stated that he suffered multiple fracture and grievous injuries. The Doctor, who examined him, to fix the disability suffered by the petitioner due to the accident deposed as P.W.2 and stated that the petitioner has suffered 30% permanent disability and issued Ex.P8 disability certificate to that effect. The Xray taken by him to assess the disability of the petitioner is marked as Ex.P9. Admittedly, P.W.2 has not given any treatment to the petitioner. There is no evidence on record to show that the petitioner who is employed as Head Constable in Tamil Nadu Police suffered any de-promotion or alteration of his job status due to the injury suffered by him. Admittedly, there is no evidence on record to show that the petitioner suffered any functional disability of loss of income. In such circumstances, the Tribunal is justified in fixing the disability at 25% and awarding compensation at the rate of Rs.3,000/- per percentage. Thus, the compensation of disability fixed by the Tribunal as Rs.3,000/- x 25% = Rs.75,000/-/ is just and proper. The Tribunal taking into consideration Ex.P5 Medical bills awarded a sum of Rs.22,595.30 towards medical expenses. Before this Court, neither the petitioner nor the second respondent Insurance Company advanced any argument about the modification of the quantum of award amount. In such circumstances, considering the available materials on record and reasoning given by the Tribunal for granting Rs.1,75,100/- as compensation to the petitioner appears to be just and proper and the same needs no interference.

12. The learned counsel appearing for the second respondent/Insurance Company contends that the driver of the offending vehicle was not having any driving licence to drive commercial vehicle and as the same amounts to violation of policy condition, the second respondent-Insurance Company is not liable to pay any compensation. It is further pointed out that the driving licence of the first respondent vehicle driver is produced as Ex.R4 and it will clearly reveal that the driver was not authorised to drive any commercial vehicle but only LMV's. The second respondent also produced the investigation report given by R.W.1 as Ex.R3 and copy of the insurance policy for the offending vehicle as Ex.R2. The person who deposed as R.W.1 categorically stated that it is clear for Ex.R4 driving licence that the said Ganesh Kumar was not having any proper licence to drive the auto. The Tribunal on the basis of available records, the driver of the auto was having proper licence and there is no violation of policy condition. However, the learned counsel appearing for the Insurance Company contended that Ex.R4 is issued for 20 years and there is no entry of Badge produced by the first respondent. It is clear from the same that the driver Ganesh Kumar was not authorised to drive the commercial vehicle as no badge entry was given to him. The learned counsel appearing for the respondent pointed out that in such circumstances, the finding of the Tribunal that there is no violation of policy condition is not correct. As such, it is clear that the driver of the first respondent vehicle was not authorize to drive the commercial vehicle and the same will amount to violation of policy condition. In such circumstances, the claim of the second respondent Insurance Company that they are not liable to pay any compensation cannot be accepted, but, they are bound to pay the award amount as the policy coverage was in force and then recover the same from the owner of the vehicle, the first respondent as violation of policy condition has been committed.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The amount awarded by the Tribunal dated 07.04.2010 made in MCOP.No.4734 of 2003 on the file of the Motor Accident Claims Tribunal,IV Judge, Small Causes Court, Chennai, is confirmed. The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.1,75,100/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The second respondent/Insurance Company is entitled to recover the award amount from the first respondent/the owner of the vehicle after depositing the award amount. On such deposit, the petitioner is permitted to withdraw the award amount with

accrued interest, less the amount if any already withdrawn, by filing necessary application before the Tribunal.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

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

2.The Record Keeper,
VR Section,
High Court,
Madras(2 copies)

+ 1 cc to Ms.R.Rathna Thara Advocate,SR.12235
+ 1 cc to Mr.K.Varada Kamaraj Advocate,SR.11997

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