IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN
Civil Miscellaneous Appeal No.964 of 2014

The Manager
M/s.HDFC Ergo General Insurance Co. Ltd.,
No.528, II Floor, Anna Salai,
Teynapet, Coimbatore-600 018. ... Appellant/4th Respondent

..vs..

1.Selvam
.. 1st Respondent/ Petitioner

2.Mrs.Kumari

3.The Branch Manager,
M/s.United India Insurance Co. Ltd.,
The Divisional Office
No.73, C.T.H. Road,
Ambattur, Chennai- 600 053.

4.Padmanaban
.. Respondents 2 to 4/Respondents 1to3

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 05.11.2012 made in MCOP.No.213 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Thiruvallur.

For Appellant : Mr.M.B.Gopalan
For Respondents R3: Mr.J. Chandran for R-3
R1-Mr.G.Karthikeyan

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 05.11.2012 made in MCOP.No.213 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Thiruvallur, the 4th respondent-Insurance Company filed this present appeal for setting aside the order passed by the Tribunal.

2. For the 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 12.03.2010 at about 10.30 a.m., while the petitioner was travelling in a share auto bearing registration No.TN-20-AF-5564 from Pullarambakkam to Thiruvallur, while coming near the Collector Office at Thiruvallur, a occupant of a stationary car bearing Registration No.TN-07-AW-2169 stationed on the left side of the road suddenly opened the right side door of the car and as the auto was proceeding at high speed, the petitioner who was seated on the left side of the share auto was hit by the car door and suffered grievous injuries, as the share auto was dashed against the door opened by the occupant of the car. Thus, the petitioner contends that negligence is to be fixed on both vehicle driver and the owners of both the vehicles are liable to pay the compensation as well as the insurer of the said vehicles. The petitioner contends that he was working as an agricultural coolie and was earning a sum of Rs.6,000/- per month and due to the injuries suffered, he is unable to attend to his normal work. Hence, he sought for a sum of Rs.1,50,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the 2nd respondent/Insurance company filed counter contending that the auto in which the petitioner travelled was proceeding at normal speed and it was only due to the negligence of the occupant of the car which was parked in a non parking area, opening the door without any signal caused the accident. Only due to sudden opening of the right side door of the car caused injuries to the petitioner. As such, the 2nd respondent-Insurance Company contends that the insurer as well as the respondent/owner of the auto which was insured with them is not liable to pay compensation and they sought for dismissal of the petition against them.

5 Likewise, the 4th respondent-Insurance Company filed a counter contending that the vehicle involved in the accident is not insured with them and they are not liable to pay and compensation amount. The third respondent car bearing Registration No.TN-07-AW-2169 was insured with IFFCO-TOKIA General Insurance Company as per the Policy No.38466296 and the policy period was from 19.02.2009 to 26.04.2009. The 4th respondent Insurance Company is no way connected as the vehicle of the third respondent was not insured with them. Instead of impleading the IFFCO-TOKIO Insurance Company, the petitioner impleaded 4th respondent-Insurance Company wrongly. Thus, the 4th respondent sought for dismissal of the claim petition against them.

6. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P6 to prove his claim. On the side of the respondents, the 4th respondent was examined R.W.1 and documents Ex.R1 to Ex.R3 were produced to prove their claim.

7. The Tribunal, on the basis of materials available on record, found the drivers of the first respondent auto and 3rd respondent car were negligent and caused the accident, awarded a sum of Rs.77,270/- as compensation to the petitioner. Being aggrieved over the findings of the Tribunal, the 4th respondent-Insurance Company has come forward with this present appeal.

8. Heard the learned counsel appearing for the 4th respondent-Insurance Company/Appellant and the learned counsel appearing for the petitioner/claimant/respondent and perused the materials available on record.

9. The learned counsel appearing for the 4th respondent-Insurance Company contended that the Tribunal passed the award without proper appreciation of the evidence on record. The 4th respondent-Insurance Company pointed out that the vehicle involved in the accident was insured with them only from 13.03.2010 and not on the date of accident, i.e., on 12.03.2010. The policy coverage was only from the next day of the accident and the same was not considered by the Tribunal. The 3rd respondent vehicle was insured with IFFCO-TOKIO General Insurance Company on the date of the accident. The Tribunal has not appreciated the same. Hence, the 4th respondent-Insurance Company sought for setting aside the award passed against them.

10. On careful appreciation of the evidence, the Tribunal has found that the negligence of both vehicle drivers caused the accident and passed an award for a sum of Rs.77,270/-, neither the claimants nor the respondents 1 to 3 have come forward with any appeal questioning the finding of the Tribunal on the aspects of the negligence, liability and quantum of award, but only the 4th respondent Insurance Company has come forward with the present appeal contending that on the date of accident, the third respondent vehicle was not insured with them. The 4th respondent examined R.W.1 and he produced EX.R1 to Ex.R3 policy copy and receipts to prove the claim of the 4th respondent. As per the said documents, the policy coverage was only from 13.03.2010 to 12.03.2011, where as the accident took place on 12.03.2010 itself. The petitioner has not produced any evidence to show that the third respondent vehicle involved in the accident, was insured with the 4th respondent on the date of accident i.e., on 12.03.2010. Admittedly, the first respondent share auto was insured with the second respondent Insurance

Company. The owner of the car who is arrayed as third respondent has not come forward with any evidence to show that on the date of accident the said vehicle was insured with the 4th respondent. As such, it is clear from the evidence produced by the 4th respondent that the third respondent car was not insured with them on the date of accident. Hence, they are not liable to pay any compensation. As such, the award passed by the Tribunal against the 4th respondent alone is liable to be set aside.

11. As stated earlier, the other respondents/owners/Insurer has not come forward any appeal challenging the award passed by the Tribunal. Thus, the impunged Award passed against the respondents 1 to 3 is to be confirmed and the impunged award passed against the 4th respondent-Insurance company is hereby set aside.

12. In the result, this civil miscellaneous appeal is allowed and the award passed against the appellant/4th respondent-Insurance Company alone is set aside. No costs. In all other aspects, the Award by the Tribunal dated 05.11.2012 made in MCOP.No.213 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Thiruvallur, is confirmed. The respondents 2 to 4 herein/Respondents 1 to 3 in MCOP.No.213 of 2010 is directed to deposit the entire award amount of Rs.77,270/- 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. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Thiruvallur.

copy to
The Section Officer,
VR,Section,
High Court,Madras.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.22734

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.23448

+1cc to Mr.J. Chandran, Advocate,sr.23430

C.M.A.No.964 of 2014

SSV(CO)
GSP(28/06/2018)