

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

CMA. No.2333 of 2010

Branch Office,
The new India Assurance Co. Ltd.,
No.39-C, Bye-Pass Road,
Dharmapuri Town & Taluk. ...Appellant/Respondent

Vs

Poomalai ...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.09.2008 and made in M.C.O.P.No.351 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.K.Shakespeare

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 29.09.2008, passed by the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri in M.C.O.P.No.351 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) A TATA Tempo Van bearing Registration No.TN-29-8555 suffered damages on 19-04-2005 due to the rash and negligent driving by its driver, when the vehicle was carrying Tomato Boxes and proceeding to Palacode Market. The said vehicle was insured with the Appellant. The owner of the vehicle namely, the respondent, preferred a compensation claim before the Motor Accident Claims Tribunal in M.C.O.P.No.351 of 2006 seeking a compensation of Rs.1,09,320/-, restricted to Rs.1,00,000/- against the Appellant.

(ii) The Motor Accidents Claims Tribunal, by its Award dated 29.09.2008 in M.C.O.P.No.351 of 2006 directed the Appellant to pay a sum of Rs.60,000/- to the respondent together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also awarded costs of Rs.2500/-.

(iii) Aggrieved by the Award dated 29.09.2008 passed in M.C.O.P.No.351 of 2006, the instant appeal has been filed by the Insurance Company.

3.Heard, Mr.N.Vijayaraghavan, learned Counsel for the Appellant, Mr.K.Shakespeare, learned Counsel for the respondent.

4.According to the learned Counsel for the Appellant, the primary ground for challenge in the instant appeal is that the claim filed by the respondent before the Motor Accidents Claims Tribunal is not maintainable, since it is an own damage claim. The respondent has made a claim for damage caused to the vehicle which he has insured with the Appellant.

5.According to him, it is settled law that for an own damage claim, the Motor Accidents Claims Tribunal is not an appropriate forum to adjudicate the compensation claim made by the respondent.

6.Per Contra, the learned Counsel for the respondent would submit that the claim is maintainable before the Motor Accident Claims Tribunal when, the Insurance Policy is a package policy and a comprehensive policy. Further, the learned Counsel for the respondent would contend that the jurisdiction issue was never raised by the Appellant before the Tribunal.

7.This Court after considering the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a)As rightly contended by the learned Counsel for the respondent, the jurisdiction of the Tribunal was never raised by the Appellant before the Tribunal. The Appellant had filed its Counter to M.C.O.P.No.351 of 2006 and the grounds raised in the instant appeal that the claim is not maintainable was never raised in the Counter Statement filed by the Appellant before the Tribunal.

(b)Since the Appellant never raised the jurisdiction issue before the Tribunal, no issue was framed by the Tribunal with regard to jurisdiction. Therefore there arose no necessity for the Tribunal to adjudicate on the jurisdiction issue.

(c)The Appellant has not disputed quantum of compensation awarded by the Tribunal in this appeal, but they have only raised the jurisdiction of the Tribunal to adjudicate the claim. The compensation provisions under the Motor Vehicles Act a beneficial and benevolent provisions meant to compensate accident victims, this Court at this stage cannot interfere with the findings of the Tribunal.

8.In the light of the above mentioned observations, this Court is of the considered view that there is no merit in the instant appeal.

9.Accordingly, the Civil Miscellaneous Appeal is dismissed. No Costs.

10.The Appellant Insurance Company is directed to deposit the entire Award amount to the credit of M.C.O.P.No.351 of 2006 along with interest awarded by the Tribunal, if not deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is permitted to withdraw the same on making an appropriate application.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Dharmapuri.

2. The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate Sr.59400
+1cc to Ma.K.Shakespear, Advocate Sr.59555

CMA. No.2333 of 2010

rsi[co]
srg 19/11/2018