IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2580 of 2018

Kalvikkarasi .. Appellant/Petitioner

Vs.

1.T.Ranganathan

2.National Insurance Co. Ltd.,
Registered Head Office at No.3,
Middleton Street,
Kolkata 700 071. .. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 07.11.2016 made in M.C.O.P.No.237 of 2014 on the file of the Special District Court, (Motor Accident Claims Tribunal), Dharmapuri (previously M.C.O.P.No.67/2013 on the file of Principal District Court, Dharmapuri) in absolving the 2nd Respondent/Insurer from liability as well as challenging award of lesser compensation.

For Appellant : Mr.N.S.Sivakumar

For R2 : Ms.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal is filed, challenging the portion of the award exonerating the 2nd respondent-Insurance Company from its liability and for enhancement of the compensation granted by the award dated 07.11.2016 made in M.C.O.P.No.237 of 2014 on the file of the Special District Court, (Motor Accident Claims Tribunal), Dharmapuri.

2.The appellant is the claimant in M.C.O.P.No.237 of 2014 on the file of the Special District Court, (Motor Accident Claims Tribunal), Dharmapuri (Formerly M.C.O.P.No.67 of 2013 on the file of the Principal District Court, Dharmapuri). She filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of her daughter namely, T.Vasuki, who died in the accident that took place on 02.02.2001.

3.The Tribunal after considering the pleadings, oral and documentary evidence, held that the 1st respondent, driver-cum-owner of the motor cycle is responsible for the accident and directed the 1st respondent to pay a sum of Rs.8,52,000/- as compensation to the appellant, on the ground that no insurance policy was in force at the time of the accident.

4.Challenging the said portion of the award directing the 1st respondent alone to pay the compensation and for enhancement of the compensation, the appellant has come out with this appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the policy produced by the 1st respondent, marked as Ex.R1 does not relate to vehicle involved in the accident, as the vehicle was mentioned as TN-29-AY-2997, whereas the vehicle involved in the accident was bearing Registration No.TN-29-AY-4997. The Tribunal failed to verify the Chasis and engine number as mentioned in Ex.R1 and ought to have held that the number mentioned as TN-29-AY-2997 correlates details of the vehicle. The Tribunal erred in accepting Ex.R2, mail information inspite of its authenticity being questioned. The 2nd respondent could have very well manipulated the computer details and produced Ex.R2. The 2nd respondent could have very well verified in the website and found the proposal, Ex.R1 and they cannot deny their liability on the ground that web portal was not recognized by them. The 1st respondent as R.W.1 has categorically admitted that at the time of registration, vehicle was insured with the 2nd respondent. The learned counsel appearing for the appellant further contended that the amounts awarded by the Tribunal is meager and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that at the time of accident, the vehicle belonging to the 1st respondent was not insured with the 2nd respondent. Ex.R1 relates to subsequent period and the vehicle number mentioned in Ex.R1 is TN-29-AY-2997 and not TN-29-AY-4997 which is the vehicle in question, involved in the accident. The 1st respondent has not proved that his vehicle was insured with 2nd respondent till 26.03.2011 and on the date of accident i.e., on 02.02.2011, the insurance policy issued by the 2nd respondent was in force. On the other hand, the 2nd respondent has produced Ex.R2, to show that there was no policy issued by the 2nd respondent at the time of accident. The Tribunal has given valid reason for exonerating the 2nd respondent-Insurance Company and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused all the materials available on record.

8.The issues to be decided in the present appeal are:

1.Whether the insurance policy issued by the 2nd respondent in respect of the vehicle involved in the accident was in force?

2.Whether exonerating the 2nd respondent - Insurance Company from its liability is correct?

3.Whether quantum of compensation awarded by the Tribunal is just compensation or meager?

Points 1 to 3:

9.From the materials on record, it is seen that originally, the appellant filed claim petition only against the 1st respondent. The 1st respondent in the counter statement after denying various averments made by the appellant, contended that the vehicle in question was insured with the 2nd respondent-Insurance Company and the Insurance Company is also a necessary party. Only after the said stand taken by the 1st respondent, the 2nd respondent was impleaded as party to the claim petition. In paragraph No.8 of the counter statement filed by the 1st respondent, he has stated that the vehicle in question was insured, but he has not stated the name of the Insurance Company. The 2nd respondent-Insurance Company in the counter statement has stated that the vehicle involved in the accident was not insured with them on 02.02.2011, i.e., on the date of accident. The previous policy mentioned in Ex.R1 was not issued by the 2nd respondent. From the materials on record, it is seen that Ex.R1 was downloaded by the 1st respondent from website. The 1st respondent has not explained as to why he has not downloaded the earlier policy, especially the policy relating to the date of accident. The 2nd respondent has produced Ex.R2 to show that they have not issued any policy for previous period.

10.The contention of the learned counsel appearing for the appellant that the 2nd respondent could have tampered the evidence in the computer storage device to escape from its liability to pay the compensation is without merits. The 1st respondent as owner or the appellant as claimant ought to have produced the insurance policy to show that the insurance policy was in force for the vehicle in question on the date of accident and only the 2nd respondent is the insurer of the vehicle. The 1st respondent has failed to prove that the vehicle was insured with the 2nd respondent on the date of accident. The Tribunal has considered all the above facts, especially Exs.R1 and R2 in proper perspective and exonerated the 2nd respondent-Insurance

Company from its liability. There is no error in the finding of the Tribunal exonerating the 2nd respondent-Insurance Company and directing the 1st respondent to pay the compensation. The issue Nos.1 & 2 are answered accordingly.

11.As far as the quantum of compensation is concerned, considering the age and avocation of the deceased, the Tribunal has awarded compensation, which is just compensation. The appellant has not made out any case for enhancement of the same. Therefore, there is no perversity in the award warranting interference by this Court. Thus, issue No.3 is answered against the appellant.

12.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The 1st respondent is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special District Judge,
(Motor Accident Claims Tribunal), Dharmapuri.

+1 cc to M/s.N.B.Surekha, Advocate SR.No.87702
+1 cc to M/s.N.S.Sivakumar, Advocate SR.No.87816

C.M.A.No.2580 of 2018

CNR(CO)
CSL/22.03.2019