BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.848 of 2018
in
C.M.P.(MD)No.9348 of 2018

M/s.TATA AIG General Insurance Co. Ltd.,
Chennai.
Rep. by its Branch Manager ... Appellant/Respondent No.2

Vs.

1.Mokkai ...1st Respondent/Petitioner

2.Sivaraman ...2nd Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.28 of 2013, dated 31.01.2017, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Theni.

For Appellant : Mrs.K.R.Shiva Shankarai

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Theni in M.C.O.P.No.28 of 2013, dated 31.01.2017, the appellant Insurance Company has filed the present appeal.

2.The appellant Insurance Company, who is the second respondent in M.C.O.P.No.28 of 2013, filed the present appeal challenging the award, dated 31.01.2017, directing the appellant and the second respondent to pay a sum of Rs.2,96,700/- to the first respondent as compensation. In the appeal, the appellant is challenging the award of the Tribunal fastening the liability on the appellant also.

3.The learned counsel appearing for the appellant contended that on the date of accident i.e., on 30.09.2012, there was no policy in existence issued by the appellant in respect of the vehicle in question to the first respondent. The Insurance Policy relied on by the first respondent is a fake document and not a genuine document. The reasons given by the Tribunal for fastening of liability on the part of the appellant/2nd respondent are superficial and unreasonable. The appellant had discharged the burden of proof that the policy relied on by the first respondent is fake document and the Tribunal ought to have held that there was no valid policy in force at the time of accident. The delay on the part of the agent through whom the premium alleged to have been paid cannot enure in the coverage of policy as held by the Hon'ble Apex Court and this Court.

4.I have heard the learned counsel appearing for the appellant and perused the materials available on record.

5.From the materials on record, it is seen that the accident occurred on 30.09.2012. According to the first respondent, the offending vehicle was insured with the appellant from 25.09.2012 to 24.09.2013 and on the date of accident, the Insurance was in force. From the award of the Tribunal, it is seen that under Ex.R1 premium for policy was paid by the second respondent on 12.06.2012 under Challan No.8903 to Lotus Agency, the agent of the appellant. The appellant has not denied that the Lotus Agency is not their authorised agency and no amount was received by the Lotus Agency on 12.06.2012. According to the appellant, they have lodged a complaint with the police stating that the first respondent has produced the fake policy. The said complaint was lodged with the police after 1 ½ years from the date of accident. The appellant has not taken any steps for enquiry being conduced by the police on the complaint given by them. Further, the appellant has not investigated the alleged fraud and fake policy through their own investigating agency.

6.According to the appellant, the belated payment of premium to them by Lotus Agency will not amount to issue of policy from 25.09.2012 onwards. The appellant has not furnished any details as to when they received the premium and from whom they have received premium for the policy issued by them from 03.10.2012 to 02.10.2013. Further, the contention of the learned counsel for the appellant based on Ground No.8 clearly shows that only the Lotus Agency has paid premium to the appellant.

7.The Tribunal considering all the above facts, especially Ex.R1 policy and by giving valid reasons held that on the date of accident, policy issued by the appellant was in force and the appellant is also jointly and severally liable to pay the compensation along with second respondent. There is no reason to interfere with the said award.

8.In the result, the Civil Miscellaneous Appeal is dismissed and compensation awarded by the Tribunal is confirmed. The appellant Insurance Company is directed to deposit the award amount, less amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount by filing necessary application before the

Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Theni.

2. The Record Keeper,
   V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 91216

AM
TE/SKN/SAR-4 : 05/02/2019 : 3P/5C

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