IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2319 of 2004
and 661 of 2007
and
CMP No.984 of 2007

The New India Assurance Co. Ltd.,
No.46, Moore Street
Chennai -1. .... Appellant in both CMAs/ IInd Respondent

v

1. D.Ramachandra Reddy (Died)
2. Metronex Cars & Bikes Ltd., by its Managing Director Chennai-18 (Second respondent exparte in lower Court)

3. Vedavathy
4. D.Srikanth Reddy

(Respondents 3 and 4 brought on record as LRs of the deceased first respondent vide order dated 01.11.2018 made in CMP Nos.17968, 17970 and 17972 of 2018) ....Respondents in CMA.2319 of 2004

1. Vedavathy

2. Metronex Cars & Bikes Ltd., by its Managing Director

(Second respondent was set exparte before the Tribunal) ....Respondents in CMA.661 of 2007

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common award and decree dated 13.10.2003 made in M.C.O.P.Nos.1351 and 1352 of 2000 respectively on the file of Motor Accidents Claims Tribunal, IIIrd Judge(in-charge), Small Causes Court, Chennai.

For appellant : Mr.N.Vijayaraghavan
R2 : Exparte before the Tribunal
For other respondents : Mr.A.K.Raghavalu

COMMON JUDGMENT

These appeals have been preferred by the insurance company against the common award dated 13.10.2003 passed by the Motor Accident Claims Tribunal, 3rd Judge (in-charge), Small Causes Court, Chennai (for short, 'the Tribunal') in MCOP.Nos.1351 and 1352 of 2000, which arise out of the one and the same accident that took place on 22.11.1995. Hence, they are considered and decided by this common judgment.

2.The necessary facts leading to the filing of these appeals are that on 22.11.1995 at about 8.45am, the claimants, who are the husband and wife, teachers by profession, were going in a motorcycle. When the vehicle was nearing Iruvaram Check Post, Chittoor, a Maruti Car bearing Regn.No.PY01 C 7094 belonging to the second respondent and insured with the appellant insurance company came in a rash and negligent manner and hit the motorcycle. Due to the said impact, they sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the Car, the claimants filed separate claim petitions claiming compensation of Rs.4,50,000/- and Rs.70,000/- respectively. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,04,000/- and Rs.57,000/- respectively, with interest at 9%per annum from the date of claim petitions. Challenging the same, the present appeals came to be filed by the appellant insurance company.

3.The learned counsel for the appellant has not disputed the findings of the Tribunal on negligence and quantum. However, it is the main contention of the learned counsel that the Tribunal has erred in fastening liability on the insurance company in this case, where the policy of insurance was granted only at 11.00am on 22.11.1995, whereas the accident had occurred at 8.45am on 22.11.1995. Hence, the learned counsel prayed to set aside the finding of the Tribunal to that effect. In support of the said contention, he relied on the decision of the Supreme Court in National Insurance Company Limited v. Jikubhai Nathuji Dabhi and others [1997 ACJ 351 (SC)].

4.The learned counsel for the respondent(s)/claimants on the other hand, supported the award passed by the Tribunal. According to him, the vehicle involved in the accident was insured on 21.11.1995, however, after coming to know about the accident, to deprive the legitimate claim of the claimants, the insurance company issued the policy on 22.11.1995 as if its coverage starts from 22.11.1995 at 11.00am. Thus, the learned counsel submitted that the Tribunal, after analysing the materials and evidence adduced before it, has rightly found the liability of the insurance company and the same does not call for any interference in the hands of this Court.

5.Heard both sides and perused the records.

6.There is no dispute with regard to the factum of accident and the manner in which the accident had happened. Hence, the finding of the Tribunal on negligence that the accident had occurred only due to the rash and negligent driving of the driver of the Car, need not be interfered with by this Court.

7.As regards the liability, the learned counsel for the appellant, relying on the records in possession of the insurance company, emphasized that the insurance policy was issued only at 11.00am on 22.11.1995 and there was no policy coverage at 8.45am, when the accident had occurred on 22.11.1995. Therefore, there was no liability on the insurance company to indemnify the insured/owner. To substantiate the same, the appellant has examined RW1/Senior Assistant and Exs.R1/insurance policy and R2/control Register. A perusal of those materials and evidence would disclose that the insurance policy was taken only at 11.00am on 22.11.1995 and there was no 'cover note' issued in respect of the vehicle involved in the accident. Though the first respondent(s)/claimants have taken a plea that the insurance policy was granted on 21.11.1995, however, in order to defraud and deprive their legitimate claim, the insurance policy was issued only at 11.00am on 22.11.1995, they have not adduced any evidence either in oral or documentary to support their plea. Further, the second respondent/owner of the vehicle, who is the custodian of the cover note and insurance policy, remained exparte before the Tribunal. Without considering those materials and evidence in a proper perspective, the Tribunal has wrongly come to the conclusion that there was insurance policy at the time of accident and hence, the insurance company was liable to pay compensation.

8.At this juncture, it is relevant to refer to the decision in Jikubhai case cited on the side of the appellant, wherein, the Supreme Court had taken the view that when there is a special contract mentioned in the policy stating the time when it was issued, the policy would be operative from that time and not fictionally from the previous mid-night.

9.Applying the dictum laid down by the Apex Court in Jikubhai case (cited supra) to the facts of the case at hand, this Court is of the opinion that there is no insurance coverage for the vehicle involved at the time of accident and hence, the appellant insurance company cannot be saddled with the liability to make good the loss suffered by the insured. Accordingly, the finding of the Tribunal fastening liability on the appellant insurance company is liable to be set aside and is set aside. However, the respondent(s)/claimants are entitled to receive the awarded compensation amount from the second respondent/owner of the vehicle in accordance with law.

10.Since the compensation awarded by the Tribunal is not challenged by the appellant insurance company, the same is confirmed as such.

11.In the result, this appeal is allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed. The appellant insurance company is permitted to withdraw the amount, if any already deposited, on making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Mra/rk

To
1. The Judge,
Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1 cc to Mr.N.VijayaRaghavan Advocate sr99565
+2 ccs to Mr.A.K.Raghavalva Advocate sr99832

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