IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 17.07.2019

DELIVERED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2250 of 2008

Branch Manager,
Oriental Insurance Co.Ltd.,
Tiruvarur. ... Appellant/2nd respondent

Vs

1.Venkatesan (minor) ..1st Respondent/ Petitioner

2.Jayaprakash Narayanan ...2nd Respondents/1st respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.10.2003 made in MCOP No.8 of 2002 on the file of the Motor Accidents Claims Tribunal, Tiruvarur.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.R.Muralidharan(R1)

JUDGMENT

The case in brief, is as follows:

On 30.04.2001, at about 1.15 p.m., the first respondent was proceeding in his bicycle from Panangudi to his house. At that time, the motorcycle bearing Reg.No.TN-50-A-2422, belonging to the second respondent, driven by its rider in a rash and negligent manner, from Tiruvarur to Nannilam, dashed against the bicycle which the first respondent was riding. Due to the said impact, the first respondent was thrown away and sustained injuries all over the body. He was taken to the Nannilam Government Hospital and thereafter to Tiruvarur Government Hospital and then to Thanjavur Medical College Hospital for further treatment. The injured filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,47,000/- with interest at the rate of 9% per annum from the date of petition.

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2.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has submitted that the Tribunal ought to have held that the appellant is not liable to pay any compensation to the first respondent herein, since the motorcycle in question, belonging to the second respondent, was not at all insured with the appellant Insurance Company on the date of accident. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the first respondent /claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.It was put forth on behalf of the Insurance Company before the Tribunal that the owner of the two-wheeler has to independently establish the fact that the vehicle was covered by a valid insurance of policy with the appellant Insurance Company, at the time of accident. Ex.R1 is the insurance policy of the two-wheeler, relating to the period from 03.01.2000 to 02.01.2001. Ex.R2 is the insurance policy of the two-wheeler, relating to the period from 01.05.2001 to 30.04.2002. Hence, it is seen that the two-wheeler was not under insurance coverage on the date of accident, ie., on 30.04.2001. The Tribunal, relying upon the policy proposal form and the deposition of R.W.1-Official of the Insurance Company during the cross-examination that the insurance policy will come into force from the date of submission of proposal form since premium has to be paid from that date onwards, came to the conclusion that the insurance policy was in force on the date of accident. The official of the Insurance Company also deposed before the Tribunal that only on ascertaining the documents, he would be able to give information as regards the date of payment of premium amount. But the fact remains that on the date of accident, there was no policy coverage for the two-wheeler.

7.In this connection, the learned counsel for the appellant Insurance Company, relied upon the decision of this Court in P.Raghavan v. Gopalakrishnan, reported in 2019(1) TN MAC 793, wherein the accident took place on 18.08.2002; earlier policy expired on 17.08.2002; claimant claimed that premium amount for renewal of policy was given to the insurance agent on 17.08.2002 itself, but the same was remitted on 19.08.2002. Considering the facts and circumstances of the case, this Court held that effectiveness of policy would commence only from the specified

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time and date mentioned in the policy and that since there was no policy coverage on the date of accident, the Insurance Company is not liable to pay any compensation.

8.In the present case, it is very clear that as on the date of accident, there was no insurance coverage for the two-wheeler. Hence, the Tribunal ought not to have directed the Insurance Company to pay compensation to the claimant. In view of the law laid down by this Court in the decision cited supra, following the same, this Civil Miscellaneous Appeal is allowed and the appellant Insurance Company is exonerated from payment of compensation to the claimant. No costs. If the Insurance Company has deposited any amount, the same is permitted to be withdrawn.

9.Since the Insurance Company is exonerated from payment of compensation to the claimant, there is no need to discuss the issue in respect of the quantum of compensation awarded by the Tribunal. The first respondent / claimant may agitate against the owner of the vehicle, in the manner known to law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM
To

1.The Motor Accidents Claims Tribunal
Tiruvarur.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.R.Sivakumar , Advocate SR.No. 63063
+1cc to Mr.R.Muralidharan , Advocate SR.No. 63647

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