IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.2646 OF 2008
and
M.P.No.1 of 2008

National Insurance Co. Ltd.
751, 3rd Floor, Anna Salai
Chennai 600 002 ...Appellant / 2nd Respondent

Vs.

1.S.Harikrishnababu
2.Sivakumar ...Respondents / Petitioner / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 31.01.2007 made in M.C.O.P. No.402 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Court (FTC-3), Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents : No appearance.

JUDGMENT

The National Insurance Company Ltd., Anna Salai, Chennai, second respondent in M.C.O.P. No.402 of 2004 on the file of the Additional District & Sessions Judge (FTC-3), Motor Accidents Claims Tribunal,Poonamallee, filed the present appeal under Section 173 of Motor Vehicles Act.

2. The first respondent / claimant filed the above Claim Petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 09.08.2004. According to him, when he was walking along Poonamallee Trunk Road on 09.08.2004, at about 11.30 hours, a speeding lorry bearing Registration No.TN 09 F 6922, belonging to the second respondent hit him, as a result of which, he sustained injuries all over his body. According to him, the rash and negligent driving of the driver of the lorry bearing Registration No. TN

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09 F 6922 was the cause of the accident and that since the said lorry was insured with the present appellant / Insurance Company, both of them are jointly and severally liable to pay compensation of Rs.1,00,000/- to him.

3. The owner of the lorry remained absent before the tribunal and therefore, he was set exparte. The present appellant/ National Insurance Company contested the claim petition.

4. The learned Additional District Judge (Fast Track Court 3), Poonamallee, after analysing the evidence on record awarded a compensation of Rs.64,000/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Aggrieved over the award passed by the Tribunal, the Insurance Company has filed the present appeal.

5. Mr.S.Arun Kumar, learned counsel appearing for the appellant would contend that the lorry bearing Registration No. TN 09 F 6922 did not have valid permit on the date of accident and that though this was specifically pleaded, the tribunal has observed that the Insurance Company should not have issued the Insurance Policy in the absence of permit. According to Mr.S.Arun Kumar, such an observation made by the tribunal cannot be sustained because, the permit would not be issued in the absence of Insurance Policy. He would further contend that when the tribunal has come to the conclusion that the lorry was plied without any valid permit, it should have directed the Insurance Company to pay the compensation amount at the first instance and then recover the same from the owner of the vehicle in the same proceedings. He also relied upon the decision in Kempaiah and others Vs. S.S.Moorthy and another reported in 2017 1 TN MAC 737 SC, and contended that when there is a breach of policy condition, the Insurance Company would entitle to recover the compensation from the owner of the vehicle. He also drew the attention of this Court to Section 66 of Motor Vehicles Act, 1988, which reads as follows:

> Section 66: Necessity for Permit: (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

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A perusal of Section 66 of Motor Vehicle Act, 1988, clearly shows that the owner of the lorry bearing Registration No. TN 09 F 6922 did not adduce sufficient evidence to show that he plied the vehicle with valid permit on the date of accident and instead, he remained absent before the tribunal and was set exparte. In the facts and circumstances, the order passed by the tribunal is liable to be set aside.

6. In the result,

(i) The appeal is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) The order of the tribunal fastening the liability entirely on the appellant is set aside.

(iii) The quantum of compensation awarded by the tribunal is upheld.

(iv) The Insurance company is directed to pay the compensation amount of Rs.64,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle, namely, the second respondent herein, in the same proceedings.

(v) On such deposit being made by the appellant, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bga

To

Additional District & Sessions Judge (FTC-3),
Motor Accidents Claims Tribunal,
Poonamallee, Chennai

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.5157

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and M.P.No.1 2008

GJ(CO)
SSM(02/04/2019).

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