IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1056 of 2015
and M.P.No.1 of 2015

The Divisional Manager
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street (Behind Anna Statue)
Thiruvannamalai-606 601.

(now this office functions at
SV Complex, II floor, No.179
Eswaran koil street
Puducherry-605 001. ..Appellant

Vs

1.N.Swaminathan

2.R.Venkatesan

3.Abdul Khader ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2014 made in M.C.O.P.No.41 of 2008 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant : Mrs.C.Harini
for Mr.N.Vijayaraghavan

For R1 : Mr.K.Subburam

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 04.09.2014 made in M.C.O.P.No.41 of 2008 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.41 of 2008 on the file of Motor Accidents Claims Tribunal, Principal Sub Court, Tindivanam. The 1st respondent filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.09.2007. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.3,75,000/- as compensation to the 1st respondent. Against the said award dated 04.09.2014 made in M.C.O.P.No.41 of 2008, the appellant-Insurance Company has come out with the present appeal challenging the liability fastened on them.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal has erred in fastening liability on the part of the appellant while the contract of insurance was cancelled before the date of accident and there was no valid insurance coverage on the date of accident. The appellant duly discharged the burden casted on them and award of the Tribunal is erroneous. The cheque issued for premium for the insurance policy was dishonoured and the Tribunal ought to have ordered pay and recovery and prayed for setting aside the award of the Tribunal.

4.Per Contra, the learned counsel appearing for the 1st respondent contended that the appellant has not produced any document to show that the cheque was dishonoured and cancellation of policy prior to the date of accident was informed to the respondents 2 and 3 and the concerned Regional Transport Office. The appellant has not proved that Ex.R1 series from the Insurance Company was served on the respondents 2 and 3. The Tribunal considering the materials on record, held that the appellant has not intimated about the cancellation of policy to the owner of the vehicle and also to the Regional Transport Office prior to the date of accident and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

6. The contention of the learned counsel for the appellant is that the cheque issued by the 2nd respondent towards premium for package policy was dishonoured and policy issued to the 2nd respondent was cancelled. According to the learned counsel appearing for the appellant, the appellant informed the same by Ex.R1 series, dated 24.08.2010 to the 2nd respondent. From the award of the Tribunal, it is seen that the appellant has not produced any document to show that the appellant informed about the dishonour of cheque and cancellation of policy either to the respondents 2 and 3 or to the Regional Transport Office. Further, the Tribunal has taken note that the letter intimating dishonour of cheque and cancellation of policy was not signed by any officer of the appellant. In the letter, there is an acknowledgement that the said letter was received by the agent E.Chandr and the appellant has not examined the said E.Chandr to prove that the said

letter was served on the 2nd respondent. The appellant has made an endorsement that 'letter received by agent Mr.E.Chandr” and no document was produced by the appellant to prove that the said letter was received by the second respondent subsequently. The Tribunal considering the materials available on record, pleadings, oral and documentary evidence, has concluded that the appellant failed to prove that the cancellation of policy was intimated to the 2nd respondent and Regional Transport Office prior to the date of accident and directed the appellant to pay compensation on behalf of the 3rd respondent. There is no error in the said findings of the Tribunal warranting interference by this court.

7.In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal 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 1st respondent-claimant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj/rst

To
1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Tindivanam.

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

+1cc to Mr.N.Vijayaraghavan, advocate sr.no.5672
+1cc to Mr.K.Subburam, Advocate sr.no.5772

C.M.A.No.1056 of 2015
and M.P.No.1 of 2015

rr(co)
nr 22/03/2019