IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2019
PRONOUNCED ON : 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 220 of 2009
and
C.M.P.No.3511 of 2016

The United India Insurance Company Limited,
No.38, Anna Salai,
Chenai – 2. ...Appellants/2nd Respondent

.. Vs ..

1.V.Shanthi ...1st Respondent/Petitioner
2.C.Selvaraj ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 03.07.2008 made in M.C.O.P.No.141 of 2006, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.S.Gangaram Prasad
For R2 : No appearance

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JUDGMENT

The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.No.141 of 2006, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai, the appellant has come up with the present appeal on the point of liability.

2 The first respondent herein/claimant filed claim petition, alleging that on 06.12.2005 at about 13.15 hours when the first Respondent/claimant was travelling as a passenger in auto rickshaw bearing Registration No.TN-05-C-0556 along with a co-passenger and were proceeding from North to South on Rajaji Salai, near Fort Car parking ingate, the driver of the auto rickshaw drove the same in a rash and negligent manner and dashed against the police vehicle, which was proceeding ahead from behind and caused grievous injuries to the first respondent herein/claimant. The second respondent herein as a owner and the appellant herein as the Insurance company are jointly and severally liable to pay compensation. The second respondent herein remained ex-parte in this case.

3 The appellant herein/Insurance Company, who is the second respondent before the Tribunal filed counter statement denying the manner of the accident and validity of the policy coverage on the date of the accident and also filed petition under Section 170 of the Motor Vehicles act and the same is allowed.

4 Before the Tribunal, claimant herself was examined as PW1 and Dr.N.Saichandran was examined as PW2 and Exs.P1 to P10 were marked. On the side of the respondents one Swaminathan was examined as RW1 and Exs.R1 to R4 were marked.

5 On Consideration of oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of the auto belonging to the second respondent herein and the policy coverage is extended and held that Insurance Company and the second respondent herein as owner are liable to pay the compensation and hence, the appeal by the Insurance Company.

6 On the point of quantum, the compensation awarded by the Tribunal on different footing appears to be just and fair. Taking into consideration the date of the accident, the compensation awarded by the Tribunal does not call for any interference.

7 The learned counsel for the Insurance Company would contend that as per Ex.P10, the policy receipt was issued only on 21.12.2005 and the policy of Insurance has commenced from 07.12.2005 to the midnight of 06.12.2006. At the time of accident viz., 06.12.2005 at about 13.15 hours, there was no policy coverage.

8 Per contra, the learned counsel appearing for the first respondent herein has relied upon the judgment reported in 2007 (2) TN MAC 56 (SC) - The National Insurance Company Limited, Tiruchengode 637 211, Namakkal District Vs. Krishanan and another in C.M.P.No.3006 of 2012 to the effect that if specific time is mentioned in the Insurance Coverage, the coverage will start only from that time. From a perusal of Ex.P10, it appears that this policy was issued by appellant herein / United India Insurance Company Limited, to the Auto Rickshaw/offending vehicle having Registration No. TB- 05-C-0556 and the policy coverage is for a period of 07.12.2005 at 00.00.00 hours to the mid night of 06.12.2006. On a perusal of Ex.R4/Policy receipt, it appears that the premium paid on 06.12.2005 as per the time, it is mentioned as 14.04 hours. It is the admitted fact of the claimant that the accident had taken place at 13.15 hours on 06.12.2005. It remains to be stated that as per the Ex.P10/Policy, it commenced only at the mid night on 07.12.2005 and goes up to the mid night 06.12.2006. Admittedly, the accident had taken place on 06.122005, afternoon at 01.15 hours and hence at the time of

the accident there is no valid policy coverage for the offending vehicle/Auto rickshaw.

9 The learned counsel for the appellant herein/Insurance Company in support of his contentions, relied on the following decisions reported in

1) 2012 (1) TN MAC 571 - [The Divisional Manager, New India Assurance Company Limited, Pondicherry Vs. Poovarasan and other]

2) 2017 (1) TN MAC 168 (DB) - [The Branch Manager, National Insurance Company Limited Vs. Vijayalakshami and others],

and submitted that the policy coverage commenced only at the mid night on 07.12.2005 and accident has taken place on 06.12.2005 at 13.15 hours.

10 This Court is of the considered view that the Insurance Company is not liable to pay the compensation since at the time of the accident, there is no policy coverage. The learned counsel appearing for the respondent would contend that he has paid the policy premium on the day prior to 06.12.2005. However, even as per Ex.P10/Policy, it appears that payment has been made only at 02.09 hours on 06.12.2005, that is after the time of the accident and hence, viewing from any angle, there is no policy coverage at that time of the accident and therefore, the appellant/Insurance company cannot be mulcted with any liability and the Insurance Company is exonerated and the Insurance Company is permitted to withdraw amount already deposited before the Tribunal. Only owner of the vehicle viz., the second respondent herein is liable to pay the compensation.

11 In the result:

(i) Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed to the limited extent.

(ii) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The second respondent/owner of the vehicle is directed to deposit the award amount as ordered by Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by the Tribunal with proportionate interest, less the amount already withdrawn, if any.

(v) The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(vi) No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.G.Balaji Prasad, Advocate SR.No. 66123
+1cc to Mr.D.Bhaskaran , Advocate SR.No. 66606

C.M.A.No. 220 of 2009

A.SK(21/07/2020)