IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.2306 OF 2009
AND
CMP.NO.20994 OF 2019

Gurusamy ...Appellant/Petitioner

vs.

1.C.Sampath

2.United India Insurance Company Limited,
Divisional Office III, E.P.Buildings,
24, Mill Road, Coimbatore.
(R1 Set Exparte in the Tribunal)
... Respondents/Respondents

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 21.10.2008 passed in MCOP.No.561 of 2004 on the file of the Motor Accident Claims Tribunal / District Court, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : R1 - No appearance
Mrs.R.Sreevidhya for R2

J U D G M E N T

The appellant is the claimant in MCOP.No.561 of 2004 on the file of the Motor Accident Claims Tribunal / District Court, Salem. He filed the claim petition under Sections 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident on 09.12.2003.

2. The case of the claimant in nutshell is as follows:
On 09.12.2003, the claimant was walking along Kolathur bus stand and at about 03.15 p.m., a speeding mini door auto bearing Registration No. TN 37 T 9446, hit him, as a result of which, he sustained injuries. According to the claimant, the rash and

negligent driving of the driver of the mini door auto bearing Registration No. TN 37 T 9446 belonging to the first respondent was the cause of the accident and that since the said mini door auto was insured with the United India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the mini door auto remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned District Judge / Motor Accident Claims Tribunal, Salem while awarding a compensation of Rs.47,250/- together with interest at the rate of 7.5% per annum to the claimant also held that since the mini door auto was not insured with the second respondent / United India Insurance Company, the Insurance Company is not liable to pay compensation and that the owner of the mini door auto should pay the entire compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.K.Kuppusamy, learned counsel appearing for the appellant / claimant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

5. The main contention of the claimant is that the mini door auto was actually insured with the second respondent / United India Insurance Company, as evidenced by a copy of the Insurance Policy, which is filed as an additional document in CMP.No.20994 of 2019. A perusal of the copy of the Insurance Policy shows that the mini door auto bearing Registration No. TN 37 T 9446 was insured with the United India Insurance Company from 03.12.2003 to 02.12.2004 and the accident took place on 09.12.2003. Therefore, it is clear from the copy of the Insurance Policy that the said mini door auto was insured with the second respondent / United India Insurance Company Limited.

6. It is also pertinent to point out that the Insurance Company though contended in their counter that the offending vehicle was not insured with them, did not adduce any evidence to prove the same and the Tribunal merely based on the counter filed by the United India Insurance Company has exonerated the Insurance Company contending that there is no policy of insurance on the date of the accident. In the facts and circumstances of the present case, the order passed by the Tribunal exonerating the Insurance Company from paying compensation to the claimant is liable to be set aside.

7. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and a perusal of the award also shows that it is not on the higher side.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The second respondent / United India Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal ie., Rs.47,250/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.561 of 2004 on the file of the Motor Accident Claims Tribunal / District Court, Salem within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The District Court, Salem.

Copy To
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.93304
+1cc to Mr.K.Kuppusamy, Advocate, S.R.No.93564

CMA.No.2306 of 2009
and
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CA(CO)
CS/19/10/2020