IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
19.03.2019	01.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2694 of 2010
and
M.P. No.1 of 2010

M/s. United India Insurance Co. Ltd.
Chengalpet Branch Appellant/R4

Vs.

1. Mrs. Jayanthi
W/o. T. Ravi ... R1/Petitioner

2. M. Palanichami ... R2/R1

3. M/s. United India Insurance Co. Ltd.
1090, Poonamallee High Road,
Chennai - 600 084. ... R3/R2

4. M. Joseph Antony ... R4/R3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.659 of 2008 dated 31.12.2009 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S. Arun Kumar

For Respondent-1 : N.A. Nissar Ahmed

For Respondent-3 : No appearance

RR 2 & 4 : No such Person, Notice returned

J U D G M E N T

Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 31.12.2009 made in M.C.O.P.No.659 of 2008 Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai (for brevity, “the Tribunal”).

2. The fourth respondent before the Tribunal viz., the Insurance Company is the appellant herein filed this Appeal challenging the award on the point of liability. The first respondent herein is the claimant filed the claim petition in M.C.O.P. No.659 of 2008.

2.1. The above claim petition is filed before the Tribunal, alleging that:

On 20.05.2001 at about 20.15 hrs when the petitioner was traveling by Car bearing No.TNP-325 from Thiruvakarai to Maduranthagam i.e. from south to north direction the Lorry bearing No.TN-59-D-8113 which was coming from the opposite direction over took a vehicle and came speeding towards the car after crossing the centre median in which the petitioner was traveling. The lorry from the opposite direction dashed against the car in which the petitioner was traveling siting in the rear seat on the right hand side whereby causing severe grievous injuries to the petitioner.

2.2. As such the first respondent being the owner of the lorry bearing No.TN-59-D-8113, the second respondent being insurer of the lorry, the third respondent being the owner of the car bearing Registration No.TNP-325 and the fourth respondent being owner of the Car are jointly and severally liable and responsible to pay the compensation.

3.The third respondent herein filed Counter Statement alleging that the lorry TN-59-D-8113 was covered under the policy number 090903/31/21/11/30320/2000 for the period from 20.05.2000 to 19.05.2001 and thereafter from 30.05.2001 to 29.05.2002 under the policy number 090903/31/21/16/10290/2001. Hence, the said lorry was not insured with the third respondent herein on the date of accident ie. 20.05.2001. Therefore, the third respondent herein is not liable to pay any compensation.

4. The fourth respondent before the Tribunal, the appellant herein, has stated that the Policy in respect of the car in which injured has travelled, is for "Act only liability" and the occupants are not covered under the said policy. Hence, the Insurance Company is not liable to pay compensation in this regard.

5. The injured was examined as P.W.1 and Dr. Saichandran, was examined as P.W.2. Ex.P1 to Ex.P25 were marked. On behalf of the Insurance Company namely Second respondent and Fourth Respondent., Staff of the Insurance Company was examined as R.W.1 and the copies of the Insurance policy of the lorry were marked as Ex.R1 and Ex.R2. The copy of the Insurance policy of the Car was marked as Ex.R3.

6. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving on the part of the drivers of both the vehicle viz., the Lorry and the Car and accordingly, fixed the composite negligence at the ratio of 50% each and also held that on the date of the accident viz., 20.05.2001, there is no insurance coverage for the lorry and hence, the insurance company for the lorry, the second respondent before the Tribunal, [third respondent herein] has been exonerated from any liability and further held that as per the Registration Book [R.C.Book], the capacity of the car is found to be 1+4 including the driver and as such, the claimant has travelled in the said car as a third party and accordingly, held that there is a policy coverage under Ex.R.3 for the car and held that the third respondent/owner of the car and the fourth respondent/insurance company of the car are jointly and severally liable to pay the balance of 50%.

7. Being aggrieved by the aforesaid award, the fourth respondent before the Tribunal/Insurance Company for the car has preferred this appeal.

8. It is seen from the records that based upon the evidence P.W.1 coupled with Ex.P1 , the Tribunal has come to the conclusion that due to rash and negligence on the part of the driver of the lorry, while he was overtaking another vehicle, hit the said car, the said accident had happened. It is also further seen that if the driver of the Car was vigilant and cautious, the car may be slowed down and the said accident would have been averted. As the driver of the Car had failed to be vigilant and caustious in the Driving of the Car, the Car of the Driver has also contributed to the accident. On the aforesaid observation, the Tribunal has fixed the ratio of liability at 50:50.

9. In the absence of any challenges in the aforesaid findings of the Tribunal, the said findings are hereby confirmed.

10. It remains to be stated that as per oral and documentary evidence R.W.1 with regard to the policy coverage of the Lorry as per Ex.R1 and Ex.R2, the accident has taken place on 20.05.2001 and as per Ex.R1, Insurance policy coverage period of the Lorry is 20.05.2000 to 19.05.2001 and thereafter, the Insurance policy was taken only on 30.05.2001 to 29.02.2002 and hence, the new policy has been taken after accident. On perusal of the oral evidence of R.W.1, the Staff of the Insurance Company, Mr. Subramanian, Administrative Officer, and Ex.R1 and Ex.R2 two policies were issued to the first respondent lorry. On the date of accident ie. 20.05.2011, there is no policy coverage at 8.30 P.M. on 20.05.2001 and also the policy under Ex.R1 has expired at Mid Night 12 on 19.05.2001.

11. Accordingly, the finding rendered by the trial Court in exenoration of the third respondent herein [insurance company of the lorry] for want of policy coverage on the date of the accident is well considered and well merited and it does not warrant any interference by this Court. Accordingly, the second respondent herein [owner of the lorry] is liable to pay 50% of the award amount.

12. The next point for consideration is whether the appellant herein [fourth respondent before the Tribunal, insurance company of the car] is liable to pay the compensation to the claimant.

13. After perusing the document Ex.R3-copy of insurance Policy issued by the appellant/insurance company in respect of the Car of the fourth respondent herein, it is only an act policy and it does not cover the claim of occupants of the car. On perusal of the policy, no additional premium has been paid for extending the policy coverage for the occupants of the car and hence, the finding given by the Tribunal holding that the appellant/insurance company, being the insurer of the car is liable is not sustainable and the said finding is hereby stands vacated and accordingly, it is held that the appellant/insurance company, being the insurer of the car is exonerated from liability to pay the compensation to the claimant/first respondent herein.

14. In fine, having considered the facts and circumstances of the case, the first respondent herein/claimant is entitled for the quantum of compensation and the second respondent being the owner of the lorry and the fourth respondent herein being the owner of the car are liable to pay compensation to the claimant/first respondent herein at the ratio of 50%.

15. In the result, the Civil Miscellaneous petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

lbm

To

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

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 54607
+1cc to Mr.A.Nissar Ahmed, Advocate, S.R.No. 54572

C.M.A.No.2694 of 2010
and
M.P. No.1 of 2010

RV(CO)
GN(11/03/2020)