IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3440 of 2009

Branch Manager,
The Oriental Insurance Company Ltd.,
Branch Office,
No.25-C, Arunagiri Complex,
3rd Floor, Bye-pass Road,
Hosur-635 109. ... Appellant/2nd Respondent

- Vs -

1. Govindan ...1st Respondent/Petitioner

2. A.S.Khader Basha ... Respondents No.2/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 06.04.2009 made in M.C.O.P.No.80 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.R.Sivakumar

For Respondents: R1-No Appearance
Mr.R.Gopalan
for R2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Oriental Insurance Company challenging the award and decree passed on 06.04.2009 by the Motor Accident Claims Tribunal/Sub Court, Hosur, raising the following ground:-

The cheque dated 4.8.1997 for Rs.12,389/- issued by the second respondent in favour of the appellant was dishonoured due to want of funds and therefore, the cover note issued in favour of the second respondent in respect of the bus bearing registration No.TN-25-A-2005 was cancelled.

2. The learned counsel for the appellant submitted that the bus bearing registration No.TN-25-A-2005 was not at all involved in the accident and also there is no policy covered for the said vehicle. The cheque bearing no.14739 for a sum of Rs.12,389/- issued on 04.08.1997 by the second respondent drawn on D.D.D.C.Bank Ltd., Denikatta Branch towards the premium for the bus bearing registration no.TN-25-A-2005 was dishonoured and the same was returned by the Bank concerned and hence, there is no policy coverage at all for the said vehicle. Therefore, the appellant is not liable to pay any compensation to the injured. The Tribunal erred in believing the evidence of PW-2 and fixed the disability at 35%, which is not proper and also assailed the award on the different heads, where amounts have been awarded as compensation.

3. The case of the appellant is that the injured, who was a cobbler, working near Anchetty Bus Stand and on 09.06.1998 at about 8.00.p.m, when the injured was sitting in front of his shop, the S.M.B Express bus bearing Registration No.TN-25-A-2005 belonging to the first respondent therein alleged to have been insured with the second respondent therein/appellant herein, hit the appellant herein. The injured had filed a claim petition claiming damages for a sum of Rs.5,00,000/- stating that he has sustained grievous injuries, which has caused permanent disablement. The said accident was occurred due to rash and negligent driving of the bus driver and he was admitted in the Government Hospital, Denkanikottah and after taking first aid treatment, he was admitted in the Government hospital, Hosur, thereafter taken treatment privately. He had his right ankle fractured and also sustained multiple injuries all over the body. Other than the fracture, he suffered mental agony and loss of earnings. He spent more than Rs.30,000/- towards his medical treatment. He is unable to sit, stand, squat, bend, walk, ride bicycle, lift or carry any weight and unable to do any work as a cobbler and he has lost income. He was earning the estimated value of Rs.7,00,000/-, however, he restricted the claim to Rs.5,00,000/- as compensation.

4. The appellant/2nd respondent therein filed a counter and additional counter and denied the said accident itself and they have also stated that the S.M.B Express bus bearing Registration No.TN-25-A-2005 has no connection with the alleged accident. No single evidence has been produced to show that the bus was involved in the said accident. The injured sustained the alleged injuries in some other cause and not in the accident. The claim of Rs.5,00,000/- is exorbitant. The Insurance company filed additional counter stating that the said vehicle has been wrongly implicated and they are not liable to pay any compensation and further submitted that the policy filed by the owner of the vehicle for the above said vehicle is not valid at

the time of accident as the premium was not paid. Hence, prayed that they are not liable to pay any compensation.

5. On the side of the injured/claimant, he himself examined as well as two other witness and marked Exs.P1 to P7. On the side of the appellant/respondent two witnesses were examined and seven documents were marked. The Court below, after considering oral and documentary evidences, had held that the injured sustained grievous injuries and awarded a sum of Rs.72,000/- as compensation with 7.5% interest. Aggrieved by the above finding, the appellant herein has come out with this appeal.

6. The learned counsel for the appellant submitted that they have denied the said involvement of the vehicle. He would further submit that the existence of policy itself is denied as the cheque bearing no.14739 dated 04.08.1997 alleged to have issued by the second respondent for the premium has been dishonoured and the policy covers only subject to the realisation of the amount by the Insurance Company. He further submitted that as the said cheque has been dishonoured, the same has been informed to the RTO office as well as the second respondent herein and hence, they are not liable to pay any compensation and they filed proper documents to show that they have taken enough steps to prove that the policy was not in existence.

7. On perusing Ex.R2, it is found that the appellant herein had sent a letter to the first respondent but the same has not been found and only a letter written from the Indian Bank to the Oriental Insurance Company has been marked as Ex.R6. In the said letter, it has not been stated the cheque number and the date of issuance of cheque were not mentioned. The letter written by the Insurance Company to the Manager, Indian Bank, which has been marked as Ex.R5, seeking to issue the certificate stating the reason for dishonouring the cheque to enable them to mark it as Exhibit to support the case, but no reply has been received from the said Bank for the same. No details have been produced to show that the cheque has been dishonoured and hence, there was no coverage of the said policy.

8. On 21.09.2005 the letter written to the owner of the vehicle asking him to produce the insurance particulars and other than that no other material produced that the cheque, which has been issued by the first respondent, has been returned as dishonoured and the same has been informed to the RTO office or to the owner regarding the same. When there is no material evidence to show that they are not liable to pay compensation, this Court is of the view that the Court below has rightly given a finding that in the absence of any evidence, they have held against the Insurance that they are liable to pay the same.

Regarding the amount awarded on various heads is just and reasonable and this Court is not inclined to interfere with the same.

9. It is the submission of the learned counsel for the appellant that the claimant has to prove that notwithstanding Motor Ledgers, there was a policy in force on the date of accident. Regarding the said contention, this Court is of the view that when the respondents have examined the owner of the vehicle, they have cross-examined him, they ought to have made him to produce all the necessary documents to prove that the said policy and other materials to exonerate from the said liability. When the claimant produced the policy copy and it is for them to prove that in the absence of any other materials to show that the cheque has been dishonoured, the onus is on the Insurance Company to prove that they have informed the same to the owner that the said cheque issued to the Insurance Company has been dishonoured. In the absence of any material to show that Insurance Company was vigilant and that the dishonour of cheque was intimated to the owner of the vehicle/Insurer, this Court is not inclined to accept the said contention of the Insurance Company and hence, the present Civil Miscellaneous Appeal filed by the Insurance Company is liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the award amount, within a period of six weeks from the date of receipt of a copy of this judgment, whereupon the claimant would be entitled to withdraw same by filing a formal petition. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

KMI

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sub Court, Hosur.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.Sivakumar, Advocate SR.102582

SSV(CO)
CB(07/04/2021)