

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.136 of 2013

Elumalai Naicker

... Appellant

Vs

New India Assurance Company
Limited, Regiona Mansion,
No.46, Moore Street,
Chennai - 600 001.

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and award passed in M.A.C.T.O.P.No.57 of 1999 dated 27.11.2003 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Chengalpet.

For Appellant : Mr.S.Sadasharam

For Respondent : Mr.K.Vinoth

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant against the judgment and decree dated 27.11.2003 made in M.A.C.T.O.P.No.57 of 1999 on the file of Motor Accidents Claims Tribunal (Principal Sub Court), Chengalpet.

2. The claim petition was filed by the appellant/petitioner under Sections 140 & 166 of Motor Vehicles Act, 1988 (Act IV of 39 r/w. Rules 3 of M.M.C.T. Rules 196) before the Tribunal seeking compensation for the damages caused to the vehicle.

3. The case of the petitioner in the claim petition is that when the lorry was proceeding from Nerumbur to Tirukalukundram, near the nerumbur bridge, a goat suddenly crossed the road and the driver of the vehicle, to avert the accident, applied break, as a result of which the lorry got fully damaged.

4. The respondent filed their counter in the claim petition

stating that the petitioner cannot claim compensation for his own vehicle before the Court. He should seek compensation at the concerned branch office itself.

5. The Tribunal, after considering the facts and merits, dismissed the claim petition.

6. The learned counsel for the appellant submitted that the tribunal failed to find that the manner, in which the accident occurred was neither contested nor disproved by the respondent and therefore the court below ought to have awarded compensation for the damages caused to the vehicle and the Insurance policy pertaining to the vehicle involved in the accident covers compensation for the damages caused to the vehicle in the accident.

7. On the other hand, the learned counsel for the respondent vehemently denied the statement of the appellant/petitioner. According to the learned counsel for the respondent, the appellant cannot file M.C.O.P. under Sections 140 & 166 of Motor Vehicle Act, 1988 (Act IV of 39 r/w. Rules 3 of M.M.C.T. Rules 196) seeking compensation for the damages caused to the vehicle in the accident. In support of this statement, he had relied upon a judgement rendered in the case of Dhanraj Vs. New India Assurance Co. Ltd and another reported in 2005 - ACJ 1, wherein the relevant portion reads as follows:

"...8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi, 1998 ACJ 121 (SC) it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also..."

8. In the decision reported in 2005 - ACJ 1 (Dhanraj Vs. New India Assurance Co. Ltd and another), the Hon'ble Apex Court

had come to the conclusion that the owner of the vehicle cannot make any claim under Sections 140 & 166 of Motor Vehicle Act, 1988 (Act IV of 39 r/w. Rules 3 of M.M.C.T. Rules 196) for damages caused to the vehicle due to the accident . This Provision is only for the purpose of death or bodily injury to any person and their medical expenses and there by comfort to the affected family members. This is not a provision for any compensation for the damages caused to the vehicle due to the accident. Therefore, the Tribunal has rightly considered this aspect and dismissed the claim petition.

9. In the light of the above observation, there is no warrant to interfere with the award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed with liberty to the appellant to approach the appropriate forum to make his claim within a period of 30 days from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dh

To

The Motor Accidents Claims Tribunal
(Principal Sub Court), Chengalpet.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Sadasharam, Advocate, Sr.No. 11678

+1 cc to Mr.K.Vinod, Advocate, Sr.No. 11299

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CSL/11.06.2019

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