IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.1514 of 2011
and
MP.No.1 of 2011

United India Insurance Company Ltd.,
No.38, Anna Nagar, 3rd Floor,
Chennai - 2. … Appellant/2nd Respondent

Versus

1.M.H.Basheer Amammed ..1st Respondent/Petitioner

2.Arunachalam … Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the Decree and the Judgment dated 11.08.2010 passed in M.C.O.P.No.2705 of 1999, on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes) Chennai.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.K.Suryanarayanan (for R1)

: R2 - Not Ready in Notice

JUDGMENT

The United India Insurance company limited is the appellant herein. This appeal is filed by the Insurance Company questioning their liability to pay compensation to the claimant.

2.The first respondent herein is the claimant before the Tribunal. According to the claimant, he is the owner of the Van bearing Regn.No.TN-02-B-9510. On 16.06.1998, when the claimant was driving the vehicle with the goods from Ambathur to Chennai and when the vehicle was nearing Kannagi Nagar, the Lorry bearing Regn.No.TN-Q-5796, which was owned by the first respondent in the claim petition/second respondent herein and insured with the appellant/Insurance company, came behind the Van and attempted to overtake the Van in a rash and negligent manner, with the result, the lorry had hit the van. In the impact, the van belonged to the claimant suffered damages and therefore, he filed the claim petition in M.C.O.P.No.2705 of 1999 before the Tribunal, claiming a sum of Rs.2,00,000/- for the damages of the vehicle under the Act Policy.

3.The Insurance Company resisted the claim petition on the ground that both the vehicle involved in the accident were insured with the same insurance company. Both the claimant and the owner of the lorry have filed claim form. The claim form of the claimant was filed as a document under Ex.P4. Even though the claimant was offered Rs.56,393/- towards damages of the vehicle, he did not accept it. It is further contended that it is an Act Policy and the liability of the Insurance company is limited to Rs.6,000/- only and the same is to be paid by the owner of the lorry. Accordingly, the Insurance Company prayed for dismissal of the Claim Petition.

4.Before the Tribunal, the claimant examined himself as PW1 and Exs.P1 to P11 were marked. On behalf of the respondents, Mr. P. Shivanna, Assistant Administrative Officer of the Insurance Company was examined as RW.1 and Exs.R1 and R2 were marked. The Tribunal held that the accident had occurred due to the negligent driving of the driver of the first respondent in the claim petition and therefore, the respondents in the claim petition are jointly liable to pay compensation to the claimant for the damages caused to his vehicle. As regards compensation, based on the bills produced by the claimant, under Ex.P5, the Tribunal awarded Rs.83,700/- towards damages caused to the vehicle and rejected the plea of the claimant to pay Rs.24,000/- towards loss of income due to the accident.

5.The learned counsel for the appellant would contend that the policy in question is an ACT Policy and therefore the liability of the appellant/insurance company cannot be fixed over and above Rs.6,000/-. As per the tariff as on the date of accident and as contemplated under Section 147 (1) (b) of The Motor Vehicles Act, the liability of the Insurance Company is limited to the extent of Rs.6,000/- only as compensation for the damages suffered by the claimant towards damages for his own vehicle. The policy is an ACT policy without any additional premium and as per the terms and conditions of the policy, the Insurance Company is liable only to pay Rs.6,000/- to the claimant. The Tribunal did not consider that the offer made by the appellant to pay reasonable amount as compensation was not accepted by the claimant and it cannot be construed that the appellant had admitted their liability to pay the compensation amount. The claimant ought to have approached the appropriate forum, when the insurance company denied their liability to pay the compensation amount. The compensation amount awarded by the Tribunal is onerous and excessive and therefore the counsel for the appellant prayed for setting aside the award.

6.The learned counsel appearing for the claimant would contend that the policy is in force at the time of accident and there was no violation of the policy condition. The Tribunal also clearly rendered a finding based on the deposition of the claimant, as PW1 and Ex.P1, First Information Report that the driver of the lorry bearing Registration No.TNQ-5796. There is no denial with regard to the manner of accident, the ownership of the vehicle and the policy which is in force. In the absence of any contra evidence, the Tribunal is justified in awarding compensation based on the bills produced by the claimant under Ex.P5. Furthermore, the Insurance company, in the counter did not raise any plea that they are not liable to pay the compensation as the policy was an ACT Policy. When such a defence was not raised, it is not open to the insurance company to file the present appeal. Further, the Policy issued by the appellant/Insurance company was not filed before the Tribunal and hence prayed confirmation of the award.

7.I have heard the submissions made by the either counsel and perused the materials available on record.

8.After perusing the evidence, this Court is of the view that the Tribunal has correctly come to the conclusion that it was the rash and negligent manner of driving of the driver of the first respondent's lorry which had caused accident and this is not seriously disputed in causing the accident. The findings of the Tribunal, as regards, rash and negligence on the part of the first respondent/driver of the vehicle is not in dispute. The point in dispute between the parties is, to what extent the insurance company is liable to pay compensation to the claimant.

9.After perusing the evidence issued by RW.1 and cross examination of PW.1 before the Tribunal, it is seen that even though the insurance company contends that there is violation of policy condition or as per the ACT Policy, the claimant is only entitled for Rs.6,000/- as compensation, the appellant/Insurance company had failed to produce the insurance policy as a document before the Tribunal. Therefore, in the absence of production of the Policy document, the insurance company is not entitled to raise any defence to the contra. As observed by the Tribunal neither in the counter statement nor in the deposition of Mr. Shivanna, Assistant Administrative Officer of the appellant/Insurance company examined as RW.1, there is no explanation as to why the copy of the Policy has not been produced before the Court, especially, when the Insurance Company based their defence on the terms and conditions of the policy. In view of the factual position and in absence of any plea being raised in the counter statement and in the absence of the production of Policy document before the Tribunal, the Tribunal is right in fixing the liability of the insurance company at Rs.83,700/-. and this Court finds no reason to interfere with the same. Therefore, the appellant/ Insurance company appeal is liable to be dismissed.

10.In the result, the Civil Miscellaneous Appeal is dismissed. It is represented by the learned counsel for the appellant/ Insurance Company that the entire award amount, as awarded by the Tribunal has already been deposited before the Tribunal. Hence, the claimants are permitted to withdraw the entire award amount by making necessary application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Vehicles Accident Claims Tribunal
   (III Court of Small Causes), Chennai.

2. The Section Officer,
   V.R. Section, High Court, Madras - 104.

+1 CC to Mr.G.Udayasankar, Advocate sr 14435.
+1 CC to Mr.K.Suryanarayanan, Advocate sr 14484.

CMA No.1514 of 2011
and
MP.No.1 of 2011

CNR(CO)
SP(30/05/2019)