IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1587 of 2012
and
MP.No.1 of 2012

The New India Assurance Co.Ltd.,
Tiruppur ... Appellant/2nd respondent

Versus

1.K.Subramanian .. respondent/ Petitioner
2.P.Umarani ... Respondent/ 1st Respondent
(R2 set exparte before the Tribunal)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 14.10.2011 made in M.C.O.P.No.321 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Dharapuram.

For Appellant : Mrs.R.Sreevidhya

For Respondent :Mr.S.Saravanan (for R1)
:Ex-parte - (for R2)

J U D G M E N T

The New India Assurance company limited is the appellant herein. This appeal is filed by the Insurance Company questioning their liability as well as quantum of compensation directed to be paid to the claimant.

2.The first respondent herein is the claimant before the Tribunal. According to the claimant, he was one of the Partners along with the second respondent herein. The second respondent is the owner of the Fiat Uno Car bearing Regn.No.TN-39-M-3747, which was insured with the third respondent herein/Insurance Company.

(i) On 02.02.2007, when the claimant/first respondent herein was driving the said Car to inspect the Harvest Machines, while proceeding from Srivilliputhur to Vathirairuppu main road, construction work was going on to construct a bridge near Indra nagar. However, there was no indication by placing any caution board to caution the road users about the construction work. Therefore, without noticing the bridge work, in the absence of any caution board, the claimant was made to suddenly turn the car and it capsized in the road side pit. Thus, the accident occurred due to an act of vis major in which he sustained grievous injuries. He took 40 days treatment from 03.02.2007 to 14.03.2007 as an in-patient at Preethi Hospital at Madurai.

(ii) The claimant was aged 31 years at the time of accident, working as partner with the first respondent herein/Umarani as co-owner of the contract for harvest Machines and he was earning Rs.20,000/- per month. Due to the accidental injuries, he could not perform his work as before the accident. Therefore, he filed the claim petition in M.C.O.P.No.321 of 2009 before the Tribunal, claiming a sum of Rs.10,00,000/-as compensation.

3.The claim made by the claimant was resisted by the Insurance Company by taking a defence that the accident had occurred only due to the rash and negligent driving of the claimant. Further, the First Information Report in Crime.No.128 of 2007 has also been registered only as against the claimant and on completion of investigation, charge-sheet has also been filed against the claimant under Section 279 & 337 of IPC, and he pleaded guilty and paid fine. The claimant himself is a tort-feasor and therefore, the Insurance Company prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant examined himself as PW1 and as many as nineteen documents as Exs.P1 to P19 were marked. On behalf of the respondents, one Mr.Gopal, Officer of the Insurance Company was examined as RW.1 and Exs.R1 and R2 were marked.

5.I have heard both counsel appearing for the respective parties and perused the materials available on record.

6.The learned counsel for the appellant would contend that the claimant is the tort-feasor and due to rash and negligent driving on his part, the accident had occurred and therefore, the insurance company cannot be mulcted with any liability to pay compensation. Further, PW.2/Doctor has given exaggerated version with regard to the injuries sustained by the claimant and it cannot be relied on. Furthermore, at the time of accident, the claimant did not possess a valid driving licence to drive the car and that the Registration Certificate and Fitness Certificate were not valid at the time of accident and therefore also, the insurance company cannot be mulcted with the liability to pay compensation to the claimant.

7.The Tribunal has given a specific finding that the policy was in force and it covers the third party other than the owner. In the present case, it is duly proved that the first respondent is the owner of the car and the claimant is a third party in so far as the Insurance policy is concerned. Since it is proved that the policy in question is an package policy, the Insurance Company cannot be exonerated from their liability to pay compensation.

8.Based upon the evidence of PW.1/the injured claimant, coupled with the Ex.P1 to P6, the Tribunal has come to the conclusion that the accident had taken place due to rash and negligence driving of the claimant, who is a third party as per the Insurance policy. Therefore, the Tribunal rightly held that both the owner and insurer of the vehicle are jointly and severally liable to pay compensation.

9.As per the deposition of PW.2/Dr.Moses and PW.3/ Dr.K.Periyasamy and going through the evidence of Exs.P16/Driving licence of the claimant and Ex.P19/disability certificate, the Tribunal assessed the disability at 22% and awarded Rs.40,000/- under the head "for grievous injuries and Pain & suffering". After going through the evidence of Ex.P6 to P10, medical records relating to the period of the treatment for the accidental injuries and also taking note of the fact that the disability arrived at 22%, the Tribunal awarded proper compensation of Rs.1,94,800/- Even the other amount awarded by the Tribunal under the other conventional heads are also just and fair taking note of the date of accident. Thus, I do not find any error or infirmity in the award passed by the Tribunal. Hence, the present appeal is liable to be dismissed.

10.In the result, the Civil Miscellaneous Appeal filed by the appellant is dismissed by confirming the Judgment and Decree dated 14.10.2011 made in M.C.O.P.No.321 of 2009 on the file of the Motor Accidents Claims Tribunal (subordinate Judge) at Dharapuram.

(i) The Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment.

(ii) On such deposit being made, the claimant is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge) at Dharapuram.

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

+1cc to M/s.R.Sreevidhya , Advocate SR.No. 37375
+1cc to Mr.S.Saravanan , Advocate SR.No. 36990

CMA.No.1587 of 2012
and
MP.No.1 of 2012

A.SK(25/09/2019)