IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE Mr. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2042 of 2012
and
M.P.No.1 of 2012

M/s.Cholamandalam MS General Insurance Company Limited, Chennai. .. Appellant / 2nd Respondent

vs.

1.Deepanathan .. 1st Respondent / Petitioner

2.Mohamed Ali Jinna (Set exparte) .. 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 06.01.2012 in MCOP.No.101 of 2008 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Chidambaram.

For Appellant : Mrs.R.Sreevidhya

For Respondent No.1 : Mr.K.Sethuvarayar

R2 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by Cholamandalam MS General Insurance Company Limited, challenging, the Judgment and decree passed in MCOP.No. 101 of 2008, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Chidambaram. They have filed the present appeal questioning the liability, quantum of compensation and also 'pay and recovery' ordered by the Tribunal.

2. The brief case of the first respondent/claimants is as follows:

(i) The first respondent/claimant was aged about 19 years on the date of the accident. He was an ITI student.

(ii) On 11.09.2007, at about 01.30 am, while the first respondent/claimant was going in bicycle on the left side of the road slowly and carefully, a mini tempo bearing Registration No. TN 49 AY 0526, belonging to the second respondent herein, driven by its driver rashly and negligently in Melbhuvanagiri, dashed against the first respondent/claimant, as a result of which, he sustained injuries.

(iii) According to the first respondent/claimant, the accident occurred only due to the rash and negligent act of the driver of the mini tempo bearing Registration No. TN 49 AY 0526. The second respondent herein is the owner of the said tempo and Cholamandalam MS General Insurance Company Limited, who is the present appellant is the insurer of the said tempo. Therefore, the owner and insurer of the said tempo are jointly and severally liable to pay compensation of Rs.3,00,000/- to the first respondent/claimant.

3. The second respondent/owner of the said tempo was absent before the Tribunal as well as before this Court and therefore, he was set ex-parte. The Cholamandalam MS General Insurance Company Limited contested the claim petition. Before the Tribunal, PW1 and PW2 were examined, exhibits P1 to P11 were marked. On the side of the Insurance Company, RW1 was examined and exhibits R1 to R11 were marked. The learned Tribunal after analysing the documentary and oral evidences adduced, awarded a sum of Rs.2,26,000/- together with interest at the rate of 7.5% per annum and directed the Insurance Company to pay the same to the first respondent/ claimant.

4. The learned counsel appearing for the appellant/Insurance Company contended that at the time of the accident there was no valid and effective policy coverage for the offending vehicle and he drew my attention to the fact that the premium amount was paid by the owner of the vehicle by way of cheque dated 29.06.2007 and based upon the same, a policy was issued from 29.06.2007 to 28.06.2008., wherein, it is specifically stated that subject to realization of cheque. Since, the cheque which was issued for the premium amount was bounced on 04.07.2007, the Insurance Company issued notice to the owner of the said tempo on 25.07.2007. Eventhough, the notice was served on the owner of the tempo, he did not take any steps to pay premium and therefore, the Insurance Company have cancelled the policy and the copy of the cancellation policy was marked as Ex.R2 and hence, on the date of the accident i.e., 11.09.2007, there was no policy in force by the appellant/Insurance Company and therefore, fixing liability of 'pay and recovery' on the Insurance Company is erroneous in law.

5. The learned counsel appearing for the first respondent/ claimant has submitted that the claimant was aged about 19 years on the date of the accident and he was an ITI student. Due to the accident, he suffered disability to the tune of 30% and the award of Rs.2,26,000/- was passed by the Tribunal based upon the documentary evidences and medical evidence of Dr.Balamurugavel (PW2). Therefore, he would contend that the award passed by the Tribunal need not be disturbed at this juncture.

6. Heard both sides.

7. On a perusal of the cheque (Ex.R4), it is seen that the owner of the said tempo has issued a cheque representing the premium amount on 29.06.2007 and based upon the said cheque, policy was issued for a period of one year. However, it appears that, when the Insurance Company has deposited the same under Ex.R5, the cheque was returned for insufficient balance as could be seen from Ex.R6. Therefore, the bank has dishonoured the cheque for insufficiency of fund and it appears as per the Ex.R7 that the Insurance Company, the second respondent before the Tribunal has sent a communication to the owner of the vehicle (first respondent before the Tribunal) regarding the dishonour of the cheque and also issued legal notice on 30.06.2011 as could be seen from Ex.R8 and the communication has been returned.

8. It is seen from the cancellation policy (Ex.R2) that when the cheque was dishonoured by the bank, the Insurance Company issued notice to the owner of the said tempo and then, cancelled the Insurance Policy only after observing all the formalities. There is a revocation of Insurance Policy of the mini tempo bearing Registration No. TN 49 AY 0526 as could be seen from Insurance Policy (Ex.R1).

9. In the facts and circumstances, it can be concluded that the Tribunal has committed an error in holding that the coverage is still valid. Therefore, the question of 'pay and recovery' does not arise. It is to be stated that the Insurance Policy (Ex.R1) has been cancelled by the Insurance Company. The Insurance Policy (Ex.R1) has been duly revoked under copy of the cancelled policy (Ex.R11) and hence, the Insurance Company cannot be fastened upon with liability to pay compensation to the first respondent/ claimant and in this view of the matter, the appellant/Insurance Company is exonerated from any liability to pay compensation to the first respondent/claimant and the quantum of compensation awarded by the Tribunal is to be recovered from the owner of the said tempo.

10. As far as the quantum of compensation is concerned, the Tribunal has considered all the facts and circumstances and awarded a just and reasonable compensation and the same need not be disturbed at this juncture. Therefore, the quantum of compensation awarded by the Tribunal is hereby confirmed.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The order passed by the learned Tribunal in MCOP.NO.101 of 2008, with respect to liability is set aside and the 'pay and recovery' ordered by the Tribunal is also set aside. The appellant/Insurance Company is exonerated from their liability to pay compensation to the first respondent/claimant.

(iv) The owner of the mini tempo bearing Registration No. TN 49 AY 0526 is directed to deposit the entire compensation amount awarded by the Tribunal, i.e., Rs.2,26,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOPNo. 101 of 2008, dated 06.01.2012, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Chidambaram within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

(vi) If, the appellant/Insurance Company had already deposited the compensation awarded by the Tribunal to the credit of the said MCOP, then, they are at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi

To

1. The Motor Accidents Claims Tribunal,
   The Subordinate Judge,
   Chidhambaram.

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

C.M.A.No.2042 of 2012
and
M.P.No.1 of 2012

MG(CO)
SSM(01/08/2019)