IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2747 of 2011
and
M.P.No.1 of 2011

M/s. United India Insurance Company Limited,
Chennai .. Appellant/Respondent II

Vs.

1.Thiru.V.Jayaraman ..Respondent I/Petitioner
2.Thiru.J.Santhosam ..Respondent II/Respondent I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.12.2007 passed in M.C.O.P.No.770 of 2002 on the file of the learned Motor Accidents Claims Tribunal (2nd Additional Subordinate Judge), Villupuram.

For Appellant : Mr.J.Chandran

For R1&R2 : Not ready in notice

JUDGMENT

The 2nd respondent before the Tribunal, is the appellant herein. This Civil Miscellaneous Appeal has been filed against the Order and Decree dated 07.12.2007 passed in M.C.O.P.No.770 of 2002 on the file of the learned Motor Accidents Claims Tribunal (2nd Additional Subordinate Judge), Villupuram.

2. The brief facts of this case are that on 24.09.2001 at about 11.00 hrs when the appellant/claimant was proceeding on his TVS.50 Moped towards Trichy in GST Road at Asanoor Village, the car boarding Registration No.TN-09-R-7002 belonging to the 1st respondent which was driven by its driver in a rash and negligent manner from Chennai to Trichy and hit against the appellant/claimant. As a result of the accident, the appellant/claimant sustained grievous injuries all over the body. Immediately after the accident, he was taken to Government Hospital at Cuddalore where he was treated for one week as in-patient and till this date he was taken treatment at private hospital at Ulundurpet. The accident is at the fault of the car driver who failed to follow traffic rules, norms and

regulations.

3. The Tribunal took into consideration the evidence of P.W.1 and P.W.2 and Exhibits P-1 to P-8 and awarded a sum of Rs.1,16,000/- as compensation.

4. The learned counsel for the appellant/Insurance Company submitted that the policy coverage was issued on payment of the cheque. However, when the cheque was presented for encashment, the same was dishonoured and therefore, the Insurance Company have cancelled the policy and therefore the Insurance Company cannot be mulcted with any liability. It appears from the records of the lower Court that for the road accident had taken place on 24.09.2011 and while the claimant was travelling in a TVS 50, the car owned by the first respondent bearing registration No.TN 09 R 702, driven by rash and negligent manner dashed against him and thereby he sustained injury.

5. Based upon the evidence, before the Tribunal has awarded a sum of Rs.1,16,000/- as compensation and asked the Insurance Company to pay the claim and to recover the same from the owner of the car.

6. Aggrieved by the said clause to pay and recover the compensation amount, the Insurance Company has preferred this appeal.

7. The learned counsel for the Insurance Company drew my attention to Exhibit R1, the cancelled policy and admittedly the cheque issued by the owner of the car and the cheque issued for the offending vehicle was dishonoured after issuance of the policy and since the cheque got dishonoured, the Insurance Company based on Rules had cancelled the policy coverage to the car. However, they are supposed to intimate the cancellation of the policies issued for the car both to the R.T.O as well as to the owner of the vehicle, however to the dismay, no such communication appears to have been sent to the injured and the R.T.O as required under the Act. No communication has been marked as an exhibit before the Tribunal.

8.Taking into consideration the injured and non-filing of the communication before the Tribunal, it is seen that the Tribunal has disbelieved that the policy was cancelled due to dishonour of the cheque issued for the premium payment and the same is to be communicated to the owner of the car as well as the R.T.O and for non-compliance of the mandatory provision regarding the cancellation of the policy, the Tribunal has taken a view directing the driving the Insurance Company to pay the award amount and to recover the same from the insurer, the owner of the vehicle is justified.

9. Taking into consideration all the factual position, I do not find that the direction issued by the Tribunal regarding pay and recovery, needs any interference at the appellate stage and the quantum arrived at the Tribunal is found to be fair and reasonable.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal
(2nd Additional Subordinate Judge), Villupuram.

C.M.A.No.2747 of 2011 and
M.P.No.1 of 2011

AD(CO)
SP(26/04/2019)