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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2293 of 2015
And
M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Suilingi Building, No.134,
Greams Road,
Chennai - 6. .. Appellant/2nd Respondent

Vs.

1.Anjalai

2.Vijaya

3.Sekar

4.Sumathi

5.Ponnan

6.Ramesh

7.Lakshmi

8.Punitha ...Respondents 1 to 8/ Petitioners

9.Sundaramoorthy ..9th Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2014 made in M.C.O.P.No.3751 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

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For Appellant : Mr.S.Arunkumar

For RR1 to 8 : Ms.A.Subadra for Ms.M.Malar

R9 : No Appeard

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 17.12.2014 made in M.C.O.P.No.3751 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.3751 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. The respondents 1 to 8 filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Dhamodharan, who died in the accident that took place on 30.12.2008. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 9th respondent/rider-cum-owner of the motorcycle and directed the appellant/Insurance Company to pay a sum of Rs.5,75,500/- as compensation to the respondents 1 to 8 at the first instance and recover the same from the 9th respondent/owner of the vehicle. Against the said award dated 17.12.2014 made in M.C.O.P.No.3751 of 2009, the appellant-Insurance Company has come out with the present appeal challenging the liability fastened on them.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal having held that there was no insurance policy issued by the appellant on the date of the accident, erred in fastening liability on the appellant. The policy number mentioned in the claim petition relates to the period from 05.07.2007 to 04.07.2008. The 9th respondent subsequently took policy from 09.06.2009 to 08.06.2010. The accident has occurred on 30.12.2008 and the 9th respondent used the vehicle uninsured from 05.07.2008 to 08.06.2009, contrary to the Motor Vehicles Act. The Tribunal erred in holding that the appellant has issued insurance policy before and after the date of accident and therefore, the appellant is liable to pay compensation at the first instance and recover the same from the 9th respondent and prayed for setting aside the award of the Tribunal.

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4.The learned counsel appearing for the respondents 1 to 8 contended that the respondents 1 to 8 are 3rd parties and they should not suffer on the failure on the part of the 9th respondent to comply with the provisions of the Motor Vehicles Act. The 9th respondent has obtained insurance policy from 05.07.2007 to 04.07.2008 and the Tribunal considering the same, has held that the appellant is liable to pay compensation at the first instance and recover the same from the owner of the vehicle/9th respondent. The Tribunal has given valid reason for such a finding and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents 1 to 8 and perused all the materials on record.

6.From the materials on record, it is seen that the respondents 1 to 8 have mentioned the policy number and period in the claim petition. It is the contention of the learned counsel for the appellant that policy number given in the claim petition covers from 05.07.2007 to 04.07.2008. The accident has occurred on 30.12.2008 and on the date of accident there was no insurance policy issued by the appellant. To substantiate their contention, the appellant examined RW1 - Administrative Officer and marked Ex.R1 policy mentioned by the respondents 1 to 8. Further, the Motor Vehicles Inspector in his report has mentioned the policy No.011302/31/09/01/00000981. The appellant has proved the same by marking the said policy as Ex.R2. The Tribunal considering Ex.R1 and Ex.R2, held that the accident has occurred on 30.12.2008 and there was no insurance policy in respect of the offending vehicle on the said date. The Tribunal after giving such finding erroneously directed the appellant to pay compensation at the first instance and recover the same from the 9th respondent on the ground that the 9th respondent/owner of the vehicle has taken policy for the period before and after the accident and the respondents 1 to 8, who are the 3rd parties, would not be knowing whether the offending vehicle had insurance policy or not. It is well settled that when there is no insurance policy issued by the Insurance Company covering the period on which the accident has occurred, the Insurance Company cannot be held liable to pay compensation. For the above reason, the award of the Tribunal directing the appellant to pay compensation at the first instance and recover the same from the 9th respondent is set aside. The award of the Tribunal is modified directing the 9th respondent/owner of the vehicle to pay the compensation awarded by the Tribunal to the respondents 1 to 8.

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7.In the result, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is hereby modified setting aside the portion of award directing the appellant/Insurance Company to pay the compensation to the respondents 1 to 8 at the first instance and recover from the 9th respondent and the compensation awarded by the Tribunal is confirmed. The 9th respondent/owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 8 are permitted to withdraw their respective share of the entire award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the entire award amount lying in the deposit to the credit of M.C.O.P.No.3751 of 2009, already deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CSVIII)

True Copy
Sub-Assistant Registrar

mtl
To
1.The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

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

+1 cc to M/s.S.Arunkumar Advocate sr40035
+1 cc to M/s.M.Malar Advocate sr40053

C.M.A.No.2293 of 2015
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