IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.2158 of 2013
and CMP. Nos. 1 of 2013 & 12348 of 2017

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office-II,
1st Floor, 104, Peramanur Main Road,
Salem-636 007. ... Appellant

Vs

1.S.Dhandapani
2.R.Dineshkumar ...Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.11.2012 made in M.C.O.P.No.103 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

For Appellant	:	S.Arunkumar
For RR1	:	Mr.Mukund R.Pandian
For R2	:	No appearance

JUDGMENT

This Civil Miscelleneous has been preferred against the judgment and decree dated 06.11.2012 made in M.C.O.P.No.103 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

Brief facts leading to the claim application are as follows;

2. On 28.01.2006 at 7.00 P.M., the driver of the Maruthi omni Car bearing Registeration No. TN-24/A-3537 was driving the car very slowly and cautiously in the Gingee to Thiruvannamalai main road. At that time when he was nearing Gingee chelliamman

Temple, the driver of the lorry bearing Registration No. TAS-2799, belonging to the 1st respondent, insured with the 2nd respondent, drove the same in a rash, reckless and negligent manner, at an uncontrolled speed, without sounding horn and dashed against the maruthi omni car and caused th accident. The Gingee Police (Villupuram District) have registered a case against the said driver of the lorry in Crime No.62/2006 under Sections 276 and 337 of IPC. Because of the said accident, the claimant is put to revenue loss of Rs.500/- per day for the said four months i.e., Rs.60,000/-.Hence, 1st respondent being the owner of the said lorry is vicariously liable to pay the compensation to the petitioner. He claimed a sum of Rs.2,50,000/- as compensation.

3. The Insurance Company in the counter statement has denied the allegation made in the petition. The other averments made in the counter statement are that the said vehicle was insured for the second respondent is not true and the insurance company had not received copies of documents viz., driving license, notice reports pertaining to the accident. The driver of the vehicle was not having a valid driving license at the time of accident. The allegation that the petitioner had replaced the damaged parts in the workshop of SK Cars India (P) Ltd., Salem to the tune of Rs.1,50,000/- and he had spent Rs.30,000/- towards labour charges are all imaginary. As per the Bill No.6000878 BCO dated 29.04.2006, the total amount is Rs.1,33,885/- and in that Rs. 80,900 had been paid by the National Insurance Company Limited, New Delhi and the petitioner had paid the balance amount Rs.52,985/-. Hence, the claim of the petitioner for Rs.2,50,000/- is not proper.

4. Based on the evidence and documents, the tribunal has passed an award holding that the 1st and 2nd respondents are liable to pay compensation jointly and severally and accordingly awarded a sum of Rs.1,93,500/- along with interest at 6% per annum as compensation to the petitioner.

5. Aggrieved against the said liability, the Insurance company has preferred this appeal.

6. In the grounds of appeal, it is stated that the tribunal has not considered the fact that the out of the toal amount or S.1,33,880/- said to be incurred by the first respondent/claimant, the insurance company/appellant herein by taking note of the value of damages, depreciation and salvage has paid Rs.80,900/- to the repairer directly and hence the claimant is estopped from again claiming a sum of Rs.1,93,500/- based on Ex.A2, which is nothing but unjust enrichment.

7. Heard both sides and perused the documents available on record.

8. It is seen from the records that the lorry was insured with the 2nd respondent/appellant herein and the claimant has claimed a sum of Rs. 2,50,000/- as compensation for the replacement of damaged parts, labour charges, miscellaneous charges and for revenue loss.

9. The 2nd respondent who is the appellant herein and being insurer of the alleged lorry has filed the counter statement and contended that as per the investigation report, the total bill amount was Rs.1,33,885/- vide bill No.6000878 BCO dated 29.04.2006 and from the said amount, a sum of Rs.80,900/- was paid by the National Insurance Company Limited.

10. The tribunal has also analysed the evidence and documents placed before the same, has awarded a sum of Rs.1,93,500/- as compensation by holding that as per Ex.A4, the lorry was insured with the 2nd respondent and there is no reported case of policy violation, 2nd respondent is liablie to pay the compensation. Aggrieved against the said award, the second respondent/Insurance Company has preferred this appeal.

11. The appellant herein/Insurance Company has contended that since the bill amount for the damages caused to the vehicle is only Rs. 1,33,885/- and out of which, a sum of Rs.80,900/- was already paid by the Insurance Company and hence, the award passed by the tribunal granting a sum of Rs.1,93,500/- as compensation is not proper.

12. Hence, it is argued by the appellant that the claimant cannot make any further claim, once the settlement has been made for the damages by the insurer of the vehicle.

13. On hearing both sides and on perusal of record it is seen that the claimant has not filed any relevant document for claiming Rs. 52,985/- and it is very much argued by the appellant that the claimant has not filed any relevant document relating to the claim made for labour charges and revenue loss and tax loss as well as for the inconvenience caused to the claimant.

14. On perusal of the documents filed by the insurance company, it is seen that already a sum of Rs.80,900/- was settled by the National Insurance Company. Therefore, the claimant is entitled only for a sum of Rs.52,985 /-. In view of the fact that the Insurance Company has paid a part amount towards the damages, the claimant is entitled to get only a sum of Rs.52,985/- as compensation, which he had incurred to replace

the damaged parts of the vehicle as per Ex.A2.

15. In view of the above findings, the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as stated infra:-

(1) The award granted by the Tribunal is reduced to Rs.52,985/- from Rs.1,93,500/-.

(2) The interest granted by the Tribunal at 6% per annum is enhanced is enhanced to 7.5% per annum.

(3) This court by order dated 28-6-2013 directed the appellant/Insurance Company to deposit Rs.1,00,000/- with accrued interest less the amount already deposited. Therefore, excess amount, lying in deposit, can be withdrawn by the appellant/Insurance Company after satisfying the modified award of this court.

(4) The Tribunal is directed to transfer the modified amount to the claimant's bank account throu' RTGS within one week from the date of receipt of a copy of this order.

(5) There will be no order as to costs in this appeal.

(6) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

vsn/ak

To

The Principal Subordinate Judge, Krishnagiri.

CMA.No.2158 of 2013
and
CMP. Nos. 1 of 2013 & 12348 of 2017

KS(CO)
GMY(15/10/2019)