

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2907 of 2013

M/s.United India Insurance Company Ltd.,
3rd Party Claims Cell,
Ambattur, Chennai-56.

..... Appellant/2nd Respondent
- Vs -
1. Thamizhan1st Respondent /Petitioner
2. Ravikumar2nd Respondents/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 28.01.2012 made in O.P.No.411 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No.4), Ponneri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Siddharth Govind
for Mrs.Usha

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, aggrieved by the Judgment and decree dated 28.01.2012 made in O.P.No.411 of 2010 by the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No.4), Ponneri by raising the following grounds:-

1. The Claims Tribunal failed to note that the first respondent/claimant and the second respondent/owner of the vehicle are relatives and they are residing in the same address and FIR has been filed as an after thought with a motive to get an untenable compensation.

2. From the Ex.P7-Accident Register, the claimant traveled as unauthorized passenger in the goods carrier was not considered.
3. The second respondent/owner of the vehicle remained exparte in the proceedings and as per the Ex.P5-M.V.Report and P9-Driving licence, the driver had no valid and effective driving licence to drive the vehicle in question on the date of accident.
4. As per Ex.P3-Policy and Ex.P4-R.C.Book, the claimant is not covered and the Insurance Company, has no liability to pay compensation.
5. The first respondent/claimant is an unauthorized passenger and hence, prayed for setting aside the award passed by the Court below.

2. On perusing the materials, it is found that the first respondent/claimant filed the claim petition before the said Court claiming a sum of Rs.3,00,000/- as compensation stating that on 23.03.2010 around 5.30.p.m near Polachiamman Koil Check Post, Thirupalaivanam Village, Ponneri Taluk, when he was riding his Tri-Cycle from Ponneri to Pulicut and at that time, a Goods carrier bearing registration No.TN-20 AW 7908 came from same direction in a rash and negligent manner and applied break and it was capsized, due to which, the claimant sustained grievous injuries and permanently disabled.

3. The second respondent therein/Insurance Company had filed a counter denying the said allegations and submitted that on the date of accident whether the vehicle had cover of valid insurance with them has to be proved and also there is a contradiction between the FIR and the claim statement, wherein, in the FIR, it is stated that the petitioner was standing on the body of lorry with the Tri-cycle, at that time the goods carriage auto hit behind the Tri-cycle and the same was capsized, the said vehicle has been insured with the appellant herein. The statement of the claimant that he was admitted in the hospital from 22.03.2010 to 13.04.2010 as inpatient in the Government General Hospital, Chennai has not been proved by filing any document regarding his treatment and had also not explained the same in history of the case in Column No.23 and 23a. No Accident Register copy has been filed and the owner of the vehicle has not reported the said alleged accident to the concerned insurance Authorities and also the policy, driving license of the driver have not been produced for verification. Further, he prayed that there is no bona fide in the petition for claiming such exorbitant amount and prayed for dismissal of the claim petition.

4. On the side of the appellant/Insurance Company, no evidence has been produced and the claimant filed Exs.P1 to P13 and two persons were examined viz., the first respondent/claimant and the Doctor, who issued disability certificate. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.1,25,000/- as compensation for the injury sustained by him with 7.5% interest, by judgment dated 28.01.2012. Aggrieved by the said judgment, the Insurance Company preferred the present appeal.

5. The Appellant-Insurance Company submits that there are so many contradictions in the claim petition and the FIR and the same has to be looked into by this Court in accordance with law. He also further submitted that the first respondent therein, who is the owner of the vehicle not appeared before the Court to produce the driving license. The other relevant materials would show there there is collusion between the parties, who are supposed to be relatives and prayed for setting aside the judgment passed by the Tribunal. The first respondent/claimant was sitting in the load auto along with three wheeled Tri-cycle and at that time, a cow came across the road and due to the impact, the named vehicle has been capsized and he sustained fracture in the right leg and head injuries and admitted in Stanley Medical College Hospital and a rod has been inserted to fix the fracture. Ex.P1 to P8 would show that the claimant sustained injuries and the Court below has considered the same and found that the said accident has caused grievous injuries on the claimant and also the Doctor's evidence would show that knee fracture, in Leg tibia and fibula fractured into many pieces and he cannot sit properly as earlier and the Doctor, who had examined him, fixed 50% disability. The Court below has awarded a sum of Rs.1,00,000/- for the injuries sustained by him, for pain and sufferings a sum of Rs.10,000/-, for Medical Expenses a sum of Rs.15,000/-, totally a sum of Rs.1,25,000/-. Even though the appellant herein has submitted that the claimant has given contradictory statement, the appellant/Insurance Company has not taken any steps to prove the same by letting in any evidence. No oral and documentary evidence has been produced before the Court below and the appellant herein has not proved its case beyond reasonable doubts. That being the case, the Court below has rightly held that in the absence of any evidence produced to prove their stand, this Court is not inclined to interfere with the award passed by the Court below.

6. Accordingly, this Civil Miscellaneous Appeal is dismissed. By order dated 29.08.2013, this Court directed the Insurance Company to deposit 50% of the award amount as a condition for granting interim stay. If the appellant/Insurance

Company has not deposited the same, they have to deposit the entire amount along with 7.5% interest per annum, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same by filing a formal petition. No costs. Consequently connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmi

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.4,
Ponneri.

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

+1 cc to Mr.A.E.Ravichandran Advocate sr101823

+1 cc to Mr.D.Bhaskaran Advocate sr101873

C.M.A.No.2907 of 2013

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