



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.598 of 2012

and

Mp.No.1 of 2012

M/s.Oriental Insurance Co.Ltd.,
New No.216, (Old No.115),
II Floor, Broadway,
Chennai-106.

... Appellant /R2

Versus

1.Thiru.M.Selvaraj
2.Thiru.G.Narayanan

...R1 /Petitioner

...R2/R1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 13.07.2011 made in M.C.O.P.No.49 of 2006 on the file of the Motor Accident Claims Tribunal (II Additional Sub-Judge), Salem District.

For Appellant : Mr.J.Chandran

For Respondents: Not Ready Notice

J U D G M E N T

The Insurance company is the appellant herein and filed the present appeal, challenging the award dated 13.07.2011 passed in MCOP.No.49 of 2006 by the Motor Accident Claims Tribunal (II Additional Sub-Judge), Salem District.

2.According to the claimant/first respondent, on 02.08.2005, at 5.00 am, he parked his Van in front of the Railway gate at Ulunthurpet Nagar to the extreme left side of the road. At that time a Van bearing Regn.No.TN-09-H-5626 came in a rash and negligent manner, hit the claimant's Maruthi Van bearing Regn.No.TN-57-B-2999 and it was completely damaged. Further, he stating that the accident occurred due to the rash and negligent driving of the offending Van Regn.No.TN-09-H-5626, the claimant has filed the claim petition claiming a sum of Rs.1,00,000/- as compensation. The second respondent is the owner and the appellant is the insurer of the offending van.



3. Before the Tribunal, the Insurance company filed the counter statement, in which, it is specifically pleaded that as per the policy the appellant is liable to pay compensation for the third party property damage for Rs.6,000/- and the remaining amount has to be paid by the owner of the vehicle. Before the Tribunal, the second respondent/owner of the vehicle remained ex-parte.

4. After going through the evidence and records, the Tribunal awarded a sum of Rs.62,849/- as compensation under the property damage. The Tribunal, while awarding Rs.62,849/- held that the Insurance Surveyor, assessed the net loss at Rs.29,180/- and the repair charges at Rs.76,000/-, however, the claimant failed to examine the Insurance Surveyor and the personnels of Auto spare parts. Aggrieved by the said award, the Insurance company has come forward with this present appeal.

5. On perusal of Ex.R1/Insurance Policy shows that the owner of the offending van paid premium of Rs.200/- towards liability for property damage and accordingly, as per the Insurance Policy, the limited TPPD is Rs.200/-. Thus, as per Ex.R1/Policy the insurers liability is limited to Rs.6,000/- for damage to the property and the Tribunal erred in fastening the entire liability to the appellant/Insurance company.

6. Therefore, the award of the Tribunal, fixing the entire liability on the part of the Insurance company is not sustainable and the same is liable to be set aside and this Court finds that the appellant/Insurance company is liable to pay the limited extent of Rs.6,000/- only as per the terms and conditions of the policy as stated supra. With regard to the balance amount i.e., Rs.56,849/- the second respondent/owner of the offending van bearing Regn.No.TN-09-H-5626 is liable to pay the same to the claimant. Accordingly, this Court directs the second respondent to pay the above said amount to the first respondent/claimant.

7. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated that the appellant/Insurance company is liable to deposit the sum of Rs.6,000/- as per the policy to the first respondent/claimant and directed the second respondent has to pay the remaining amount of Rs.56,849/- to the claimant, within a period of eight weeks from the date of receipt of copy of this



WEB COPY

Judgment, if not already paid. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar
/true copy/
Sub Asst. Registrar

klt

To

1.(II Additional Subordinate-Judge)
The Motor Accident Claims Tribunal
Salem District.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.J.Chandran Advocate sr37164

CMA.No.598 of 2012
&
MP.No.1 of 2012

ev(co)
aa24/09/2019