IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.406 of 2015
and
C.M.P.No.17098 of 2017

The National Insurance Company Limited,
Represented by its Branch Manager,
Branch Office, Anuradha Complex,
3rd Floor, No.333, Bangalore Road,
Krishnagiri - 635 001. .. Appellant/2nd respondent

Vs.

1.T.Murugan ...1st respondent/petitioner

2.P.Santhamoorthy ..2nd Respondent/Ist respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.08.2014 made in M.C.O.P.No.1753 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mrs.N.B.Surekha

For R1 : Mr.N.E.A.Dinesh Kumar
for Mr.V.Nicholas

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 20.08.2014 made in M.C.O.P.No.1753 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant herein is the Insurance Company aggrieved against the liability fixed by the Tribunal.

3.The brief facts is as follows:

On 10.09.2010, when the claimant after attending some personal work at Krishnagiri, was waiting in his village to go to Krishnagiri. The claimant was waiting at Chinna Kothoor bus stop for the bus, at that time a new auto was proceeding to Krishnagiri. Hence, the claimant travelled in the Auto a new one, belonging to the 1st respondent and insured with the 2nd respondent, as a fair paid passenger. The Auto was driven by its driver in a rash and negligent manner. At about 7.25 hours, while the Auto was proceeding near Muniappan Cattle shed - 100 feet to Puliyancheri in Chinna Kothoor to Gurubarapalli road, due to the rash and careless driving the driver, the Auto had lost his control and dashed against a worker, who was working in the road side, and then capsize the Auto. Due to the sudden capsize of the Auto, the claimant had sustained injuries. After the accident, the claimant was immediately taken to the Government Head quarters Hospital, Krishnagiri and admitted as in-patient, where the claimant was given treatment for the fracture and injuries. Thus, the claimant claimed a sum of Rs.5,00,000/- as compensation under various heads.

4.The respondent/Insurance Company contended that the Auto-rickshaw which is mentioned in the petition was registered on 09.09.2010 as "Temporary Certificate of Registration" bearing Regn.No.TN-22-TMP-2785. In the said certificate the vehicle was classified as "Three Wheeler Private:0.28". The accident occurred on 10.09.2010. On that day, the said vehicle had not valid permit to use as commercial transport vehicle and did not obtain the fitness certificate and tax was also not paid. After the accident, the Krishnagiri RTO seized the vehicle due to above said irregularities. It is further stated that without permit, FC and non-payment of Tax, mere obtaining the policy of "passenger carrying commercial vehicle" it is not valid one. Hence, the respondent/Insurance Company totally denied the liability and contended that the passenger in the said auto is also a grievous passenger.

5.The Tribunal upon analysing the documents and evidence, has awarded a sum of Rs.1,38,500/- as compensation and directed the Insurance Company and owner of the vehicle to pay the said compensation. Against which the Insurance Company has preferred this appeal.

6.Heard Mrs.N.B.Surekha, learned counsel appearing for the appellant and Mr.N.E.A.Dinesh Kumar for Mr.V.Nicholas, learned counsel appearing for the 1st respondent and perused all the materials available on record.

7.In the grounds of appeal, the appellant has contended that the Tribunal has failed to consider the evidence of RW2 the Regional Transport Officer who had categorically deposed that the vehicle involved at the time of accident was registered as private vehicle whereas at the time of accident it was used as commercial purpose, therefore the vehicle was seized and for the said act, the owner had also paid fine. Hence, it is stated that the evidence of RW2 not properly considered by the Tribunal. The Tribunal failed to see that in support of the evidence of RW2 that the vehicle was temporarily registered as private and contrary to used the vehicle as commercial, Ex.R2 was filed, in which it is clear that temporary registration was made as private vehicle only.

8.It is seen from the records that Ex.P3/Insurance policy which reveals the fact that the 1st respondent is the owner of the offending vehicle and it is valid from 08.09.2010 to 07.09.2011. Ex.P4/purchase bill and temporary registration of certificate, which reveals that the 1st respondent is the owner of the offending vehicle and it is valid up to 08.10.2010. Driving license of the driver of the offending vehicle is valid up to Non-Transport vehicle - 05.06.2026, Transport vehicle -02.09.2014 and badge number also mentioned therein. Further, the 2nd respondent/appellant Insurance Company has admitted that the offending vehicle was insured with them during the time of accident, but at the same time the vehicle was not registered and also not obtained permit, which is violation of policy condition. Hence, this respondent is not liable to pay compensation. To substantiate the above fact, RW1 and RW2 were examined and Ex.R1 and Ex.R2 were filed. But during the course of cross examination of RW2, he has admitted that the offending vehicle was temporarily registered up to 08.10.2010. Hence the respondents are liable to pay compensation to the claimant.

9.Further, it is seen that the evidence PW1 injured/claimant and the averments in the claim petition reveals the same and the evidence of PW1 has clearly attributed the rash and negligent driving by the driver of the Auto belonging to the 1st respondent. But the appellant is very much relied on the Ex.R1/policy copy and Ex.R2/Temporary Registration certificate. But the evidence of RW1 and RW2 clearly proved the fact that the vehicle was insured for the period from 08.09.2010 to 07.09.2011 and the said vehicle was registered under temporary registration. Therefore, on the date of accident i.e. 10.09.2010, the registration for the said vehicle was in existence. RW2 also deposed that the vehicle was assessed by the Regional Transport Officer and it was used as a commercial vehicle and the owner of the said vehicle also paid fine. On the side of the appellant it is argued by quoting case law reported in "2014 ACJ 2226" in the case of "Manager, United India Insurance Co. Ltd. Vs Balakrishnan and others" is extracted as hereunder:

> "8.We find that though there was no valid fitness certificate for the lorry on the date of accident, on a perusal of the evidence available on record it is clear that the Inspector of the insurance company, who was examined as RW2, has admitted in his cross-examination that the Motor Vehicle Inspector has given a report stating that absolutely there is no mechanical defect in the vehicle. Thus, the evidence of RW2 would show that even on the date of occurrence, the vehicle was found to be fit to run. Moreover, we are of the opinion that the evidence on record would show that the fitness certificate had expired just one month prior to the date of occurrence and the same could be renewed at any time. In this situation, we are of the opinion that since the vehicle was covered by insurance on the date of the accident, the insurance company cannot deny the payment of compensation in respect of the claim made by the third parties. So far as the third party claims are concerned, the insurance company can pay the compensation amount and recover the same from the owner of the vehicle. In view of the above discussions, we are of the view that since on the date of the accident there was no valid fitness certificate, the insurance company can pay the compensation and recover the same from the owner of the vehicle."

10.In view of the above observation, on the same fact there is no fitness certificate for the vehicle and there is also no registration on the date of accident and also in view of the evidence and documents in the present case, this Court is of the view that the Tribunal ought to have made observation that the appellant has to recover the same from the owner, when there is a clear violation on policy condition. But the Tribunal has failed to observe the same and fixed the liability on the Insurance Company. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount and recover the same from the 2^{nd} respondent/owner of the vehicle by filing appropriate petition before the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

mtl
To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to M/s.N.B.Surekha Advocate sr55689
+1 cc to M/s.V.Nicholas Advocate sr55548

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