IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3150 of 2019
and
C.M.P.No.17854 of 2019

The Oriental Insurance Co. Ltd.,
No.115, Prakasam Salai,
Broadway, Chennai - 109. ... Appellant/Respondent 2

Vs.

1.Kanniappan ..Respondent 1/Petitioner

2.Muralidharan ... Respondent II/Respondent I

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2019 made in M.C.O.P.No.6305 of 2016 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 15.03.2019 made in M.C.O.P.No.6305 of 2016 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.6305 of 2016 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.09.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and

directed the appellant/Insurance Company to pay a sum of Rs.89,400/- at first instance and recover the same from the 2nd respondent/owner of the vehicle, as compensation to the 1st respondent. Challenging the said award dated 15.03.2019 made in M.C.O.P.No.6305 of 2016, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has passed an order directing the appellant to pay the compensation to the 1st respondent and recover the same from the 2nd respondent/owner of the vehicle. When there is no subsisting policy on the date of accident, since the policy was cancelled. In view of the dishonour of cheque issued by him towards payment of premium. The said policy was cancelled from the inception on 04.01.2016 by endorsement made in the cheque given by the 2nd respondent towards premium whereas the impugned accident occurred much later on 14.09.2016. The evidence of RW1 and RW2, the officials from the appellant and Ex.R1 to Ex.R7 were not properly appreciated by the Tribunal. While ordering pay and recovery, the Tribunal has also committed an error by holding that the notice of cancellation was not duly intimated to the owner of the vehicle and the RTA. The total sum awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

4.Heard the learned counsel appearing for the appellant/Insurance Company and perused all the materials on record.

5. From the materials available on record, it is seen that the 1st respondent contended that he was a painter before the accident. Due to the accident the appellant sustained injuries, he could not do his work as he was doing earlier. The Tribunal considering the nature of injuries held that 1st respondent had sustained fracture lliac wing right, fracture left pubic ramus and fracture 2nd meta tarsal bone for which the appellant was treated conservatively for the said injuries though PW2/Doctor assessed the disability at 45%. In the absence of any evidence, with regard to loss of income the Tribunal has taken at Rs.6,500/-. The accident is of the year 2016. The amount fixed by the Tribunal is reasonable. The main grievance advanced by the appellant is that on the date of accident there is no policy, since the cheque issued for payment of premium was dishonored. Hence there was no policy on that date. The Tribunal while discussing that aspect and based on the evidence placed

before the Tribunal by Ex.R1 to Ex.R4. The Tribunal has observed by stating that R1 remained exparte before the Tribunal. On the side of the 2nd respondent/appellant, RW1 & RW2 were examined and Ex.R1 to Ex.R7 were marked. There is no dispute regarding negligence. The 2nd respondent/appellant has stated that the 1st respondent did not make any premium towards policy. The cheque Ex.R1 given towards premium amount was returned as "funds insufficient" as per Ex.R2 return memo. The 2nd respondent/appellant contended that they have initmated about the return of cheque to the 1st respondent by Ex.R5 which was dated on 04.01.2016 sent through RPAD. To corroborate Ex.R5 postal receipt was not filed without postal receipt the Tribunal cannot presume that the 2nd respondent/appellant has issued the letter on 04.01.2016 to the 1st respondent. Further no A.D. Card also marked. The 2nd respondent/appellant has not taken any steps to sent notice to RTO about the cancellation of policy due to non payment of premium towards policy without proper documents. The Tribunal cannot presume that the cancellation of policy was intimated to the 1st respondent. Further the 2nd respondent/appellant has proved the violation of policy conditions by examining RW1 and marking Ex.R6 & Ex.R7. At the time of accident there is a valid policy and the 2nd respondent/appellant has proved the violation of policy conditions. The Tribunal has given a finding that it is reasonable by fixing liability on the Insurance Company by making payment to the claimant and recovery the same from the owner of the vehicle. The award made by the Tribunal is also very much reasonable by considering the nature of injuries as well as treatment taken by the claimant and disability assessed by PW2/Doctor. Hence the sum awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

6.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.89,400/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

7.The appellant/Insurance Company is directed to deposit the award amount with interest and costs, at first instance and recover the same from the 2nd respondent/owner of the vehicle, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.6305 of 2016. On such deposit, the 1st respondent/ 1st claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the 1st respondent /claimant is not entitled to interest for the default period if any.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To
1.The III Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.73293

C.M.A.No.3150 of 2019
and
C.M.P.No.17854 of 2019

BS(CO)
GMY(17/06/2020)