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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2143 of 2015

and

M.P. (MD) No. 1 of 2015

The Branch Manager,
I.C.I.C.I. Lombard General Insurance Company,
GV Complex,
III Floor No. II/1-B, Bye Pass Road,
Madurai.

.. Petitioner/Petitioner/
2nd Respondent

Vs.

1.V.Sankaralingam

.. 1st Respondent/1st Respondent/
Claimant

2.S.Murugan

.. 2nd Respondent/Respondent No.2/
1st Respondent

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.406 of 2013 in M.C.O.P.No.73 of 2013 dated 31.07.2014 on the file of the Motor Accident Claims Tribunal Cum Special Sub Court, Tirunelveli.

For Petitioner : Mr.V.Muthukamatchi
For Respondents : No Appearance

ORDER

Heard Mr.V.Bharathidasan, learned counsel appearing for the petitioner.

2.This petition is filed against the order passed in I.A.No.406 of 2013 in M.C.O.P.No.73 of 2013 dated 31.07.2014 on the file of the Motor Accident Claims Tribunal Cum Special Sub Court, Tirunelveli.

3.The petitioner herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the M.C.O.P case. The first respondent has filed a claim petition in M.C.O.P.No.73 of 2013 before the Motor Accident Claims Tribunal (District Judge), Tirunelveli. During the pendency of M.C.O.P, the petitioner herein has filed a petition in I.A.No.406 of 2013 to frame an issue regarding the maintainability of the claim petition and that the petition was dismissed by the trial Court. Against the order, the petitioner has come forward with the present petition.



4. On the side of the petitioner, it is stated that the claimant is the owner of the vehicle. On 28.02.2013 at about 09.30 hours, the petitioner was travelling in the motor cycle bearing Registration No. TN 72 AM 5256 as a pillian rider. While they were travelling along the Tirunelveli-Tiruchendur east west Road, the first respondent crossed the road from south to north and that accident took place due to the self negligence of the claimant and that no other vehicle is involved in the accident. FIR is only against the claimant. Policy did not permit compensation for the own fault of the claimant and the policy is only a third party policy and the FIR is against the claimant and the maintainability of the claim petition is to be taken as a preliminary issue. In support of his contention, the Judgment passed by the Bombay High Court in the case of **United India Assurance Company Ltd., v. Kannaiyan** reported in **C.M.A.No.2859 of 2018** is cited.

5. In support of his contention, the Judgment passed by the Bombay High Court in the case of **United India Assurance Company Ltd., v. Manjusha and Ors.** reported in **MANU/MH/2562/2018** is cited.

6. There is no representation for the respondent.

7. A perusal of the records reveals that the trial Court has looked into the matter and verified the policy and came to a finding that an additional premium of Rs.50/- was paid towards compensation for the policy holder. More over the nature of the policy cannot be decided in the revision petition. M.C.O.P. Case is a case for summary trial and there is no question of framing preliminary issue in a summary trial petition. Framing preliminary issue can be taken into consideration only in the original suits and not in summary trial petitions. At the time of disposal of the main petition, the trial Court will consider whether the Insurance Company is liable to pay compensation. There is no necessity for framing a preliminary issue in the summary petitions.

8. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in I.A.No.406 of 2013 in M.C.O.P.No.73 of 2013 dated 31.07.2014 on the file of the Motor Accident Claims Tribunal Cum Special Sub Court, Tirunelveli is confirmed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Motor Accident Claims Tribunal
Cum Special Sub Court, Tirunelveli.

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COPY TO

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.K.K.RAMAKRISHNAN, Advocate Sr. No. 53698

C.R.P. (PD) (MD) No. 2143 of 2015

12.03.2019

TR (06.04.2019) 3P 5C