IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3339 of 2008
and
M.P.No.1 of 2008

United India Insurance Company Ltd.,
8/10, Sathurankadi,
Metturdam - 636 401. .. Appellant/2nd Respondent

Vs.

1.Gopi ..1st Respondent/Claimant

2.N.Perumal ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2007 made in M.C.O.P.No.181 of 2002 on the file of Motor Accident Claims Tribunal, Sub Court, Mettur.

For Appellant	:	Mrs.I.Malar
For R1	:	No appearance
For R2	:	Mr.K.A.Prabaharan for Mr.V.Elangovan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 19.01.2007 made in M.C.O.P.No.181 of 2002 on the file of Motor Accident Claims Tribunal, Sub Court, Mettur.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.181 of 2002 on the file of Motor Accident Claims Tribunal, Sub Court, Mettur. The 1st respondent filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.03.1998.

3.According to the 1st respondent, i.e., on 12.03.1998, while he was travelling as a loadman in the Tractor bearing Registration No. TN 27 D 0500 attached with trailer bearing Registration No. TN 27 D 0501, belonging to the 2nd respondent, when the vehicle was nearing Veerakkal in Nangavalli – Mettur Road, the driver of the vehicle drove the same in a rash and negligent manner, due to which, the 1st respondent and other loadman were thrown on the road, as a result of which, the 1st respondent sustained grievous injuries. The 2nd respondent is the owner of the Tractor-trailer and the appellant is the insurer of the said Vehicle. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd Respondent and the appellant.

4.The 2nd respondent filed counter statement denying the averments made in the claim petition and contended that the Tractor-trailer was never used for any purpose other than agriculture. The 1st respondent was never engaged as load man in the Tractor. The Tractor never met with an accident on the date of accident. The 1st respondent did not travel in the Tractor on the date of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the 1st respondent.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the Tractor-trailer has not been insured with the appellant at the time of accident. There is no coverage of Insurance Policy at the time of accident. Hence, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent, examined himself as P.W.1, one Dr.Mani, was examined as P.W.2 and marked two documents as Ex.P1 & P2. On the side of the appellant, the 2nd respondent, examined himself as R.W.1, one Sundaram/Sub Inspector of Police was examined as R.W.2, one Kandasamy was examined as R.W.3 and one Venkatesan/Administrative Officer of the appellant was examined R.W.4 and marked two documents as Ex.R1 & R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of Tractor-trailer belonging to the 2nd respondent and directed the appellant/Insurance Company being the insurer of the said vehicle to pay a sum of Rs.55,000/- as compensation to the 1st respondent.

8.Against the said award dated 19.01.2007 made in M.C.O.P.No.181 of 2002, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the accident has occurred due to rash and negligent driving by driver of the Tractor. The 2nd respondent/owner of the Tractor has deposed as RW1 that the 1st respondent is not his employee and has not travelled in the Tractor and no such accident has occurred as alleged by the 1st respondent. The Tribunal failed to consider the evidence of Sub Inspector of Police as RW2, who deposed that investigation was not completed and no charge sheet was filed. The Tribunal failed to consider the evidence of RW1, who deposed that he has not insured the vehicle as he has borrowed the loan from the bank. The accident has occurred on 12.03.1998, the policy was issued only on 13.03.1998 at 2.25 pm and the appellant proved the same by producing Ex.B1 & Ex.B2. The Tribunal failed to consider the contention of the appellant that for the policies issued in the year 1998, the policy number bears the year 1997 till the completion of financial year i.e. upto 31.03.2008 and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

11.It is the contention of the 1st respondent that while he was travelling as a load man in the Tractor belonging to the 2nd respondent, the driver of the Tractor drove the same in a rash and negligent manner and caused the accident. To substantiate the said contention, the 1st respondent examined himself as PW1 and marked Ex.P1/FIR, which was registered against the driver of the Tractor belonging to the 2nd respondent. The 2nd respondent who is the owner of the Tractor denied that the 1st respondent was his employee and denied the accident as alleged by the 1st respondent. The 2nd respondent has not examined the driver of the Tractor. The 2nd respondent examined Sub Inspector of Police as RW2 who deposed that the investigation has not completed and no charge sheet is filed, but he admitted that the Tractor-trailer was sent to Motor Vehicles Inspector for investigation who gave the report that the accident occurred involving the said vehicle. Considering all the above materials, the Tribunal has rightly held that the accident has occurred due to rash and negligent driving by driver of the Tractor and the 1st respondent suffered injuries in the said accident.

12.It is the contention of the 2nd respondent that there was no policy of insurance in force on the date of accident. According to the appellant, the policy was issued only on 13.03.1998 at 2.25 pm. On the date of accident i.e. on 12.03.1998 no policy was in force. RW1 was examined to substantiate the said contention. RW4/Administrative Officer of the appellant admitted that the 2nd respondent borrowed loan from the Bharat State Bank on the security of Tractor-trailer and bank was paying premium for the Insurance Policy on behalf of the 2nd respondent. RW4 did not state that for which period they have received premium from the bank and when was the policy last renewed. RW4 has not stated who paid the premium on 13.03.1998 for the policy issued by them on that date. The Tribunal, considering the policy number, has concluded that originally the policy was issued in the year 1997 and Ex.R1 was renewed periodically and appellant has not filed the policy for the accident period to avoid payment of compensation to the 1st respondent. The Tribunal has given valid reason for holding that the appellant as insurer is liable to pay compensation to the 1st respondent. Considering all the materials in its entirety, this Court is of the view that there is no error or perversity in the award of the Tribunal warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.55,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Subordinate Judge,
   The Motor Accident Claims Tribunal
   Mettur.

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

+1cc to Mr.V.Elangovan, Advocate SR.No.23157

+1cc to Mr.I.Malar, Advocate SR.No.22472

C.M.A.No.3339 of 2008
and
M.P.No.1 of 2008

VBA(CO)
GMY(21/08/2020)