IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1381 of 2010
and
M.P.No.1 of 2010

The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach, Moore Street,
Chennai - 600 001. .. Appellant/2nd Respondent

Vs.

1.M.Azhagusundaram ..1st Respondent/Claimant
2.M.Dhanasekaran ..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 15.03.2010 made in M.C.O.P.No.2730 of 2005 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.S.Jayasankar
For R1 : Not ready in notice
R2 : Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 15.03.2010 made in M.C.O.P.No.2730 of 2005 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2730 of 2005 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.1,25,000/- as compensation for the injuries sustained by him in the accident that took place on 03.06.2005.

3.According to the 1st respondent, i.e., on 03.06.2005, while he was walking along Lake River View Road, Kotturpuram, opposite to Spin Foundation proceeding from West to East direction, a car bearing Registration No. TN 09 W 6907, which was driven by its driver in a rash and negligent manner, hit behind the 1st respondent, as a result of which, the 1st

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respondent sustained grievous injuries. The 2nd respondent is the owner of the car 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 remained ex parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred only due to the negligence on the part of the 1st respondent. The 1st respondent has to prove that the vehicle of the 2nd respondent was insured with the appellant and driver of the vehicle had a valid driving license on the date of the accident. The Insurance cover issued to the 2nd respondent is not valid as much as the cheque issued for a sum of Rs.3,758/- by cheque bearing No.258975 dated 11.08.2004 has been dishonoured by the 2nd respondent. The same was intimated to the 2nd respondent. Therefore, the appellant is not liable to pay the third party claim as there is no valid Insurance for the vehicle involved in the accident.

6.Before the Tribunal, the 1st respondent, examined himself as P.W.1, one Dr.M.Saravanabavanandam, was examined as P.W.2 and marked ten documents as Exs.P1 to P10. On the side of the appellant, one C.D.Rajaram, was examined as R.W.1 and one Balasubramaniam, was examined as R.W.2 and marked four documents as Exs.R1 to R4.

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 car belonging to the 2nd respondent and directed the appellant/Insurance Company being the insurer of the said car to pay a sum of Rs.30,450/- as compensation to the 1st respondent.

8.Against the said award dated 15.03.2010 made in M.C.O.P.No.2730 of 2005, 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 ought to have exonerated the Insurance Company from its liability since the accident occurred after cancellation of policy. It is further contended that in the absence of payment of premium, there was no contract as such to pay any compensation by the Insurance Company. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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10.Heard the learned counsel appearing for the appellant and perused all the materials available on record.

11.It is the contention of the learned counsel for the appellant that on the date of accident Insurance Policy was not in force for the offending vehicle. The Insurance Policy was cancelled as cheque issued by the 2nd respondent for the premium was dishonoured. According to the learned counsel for the appellant, the appellant has intimated about the dishonour of cheque and cancellation of policy to the 2nd respondent and Regional Transport Office. There is no privity of contract between the appellant and the 2nd respondent. These contentions are contrary to the facts. The appellant has failed to prove that the cancellation of policy was duly intimated to the 2nd respondent and 2nd respondent received the said notice before the date of accident. RW1/official of the appellant admitted that the policy was in force at the time of accident. The Tribunal considering the above materials held that the appellant has not filed any proof to show that the policy was cancelled and the same was initimated to the 2nd respondent/owner of the vehicle. From the award of the Tribunal, it is seen that the appellant has not filed any document to show that Ex.R3 sent to the 2nd respondent and the concerned Regional Transport Office before the date of accident and the said notice was received by the 2nd respondent and Regional Transport Office before the date of accident. In view of the above facts, there is no error in the award of the Tribunal warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.30,450/- 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, to the credit of M.C.O.P.No.2730 of 2005. 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.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The V Judge,
The Motor Accident Claims Tribunal
Small Causes Court,
Chennai.

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

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