

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1528 of 2010
and
M.P.Nos.1 and 2 of 2010

M/s Sun Pharmaceutical Industries Ltd.,
Sathammai Village, Karunguzhi Post,
Madurantakam Taluk,
Kanchipuram District.

..Appellant/1st Respondent

Vs

1.Muruvammal

..1st Respondent/Petitioner

2.M/s National Insurance Co., Ltd.,
Kancheepuram Branch,
No.225, Gandhi Road,
Kancheepuram 631 501.

...2nd Respondent/2nd Respondent

3. M/s United India Insurance co. Ltd.,
No.66-68 Gandhi Road,
Madurantakam,
Kancheepuram District.

.... 3rd Respondent

(Impleaded vide order of Court Dt 24/07/2014
made in M.P.No.3 of 2010)

PRAYER: Civil Miscellaneous Appeal filed U/s 173 of the Motor Vehicles Act, 1988 to set aside the award passed in M.C.O.P.No.60 of 2005 dated 13.10.2008, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Madurantakam.

For appellant : Mr.V. Ramesh

For respondent-1 : No appearance

For Respondent-2 : Mr.M. Krishna Moorthy

For Respondent-3 : Mr.C. Paranthaman

J U D G M E N T

This appeal has been filed by the appellant to set aside the award passed in M.C.O.P.No.60 of 2005, on the file of the Motor Accident Claims Tribunal, Sub Ordinate Judge, Madurantakam.

2. The appellant is the owner of the offending vehicle involved in the accident. The first respondent is the claimant. Second and third respondents are the insurers of the offending vehicle involved in the accident.

3. The case of the appellant is that on 11.02.1005 at about 19:30 hours, when the first respondent was walking on the Vadapathy bus stand on the mud portion of the road, a bus bearing Registration No: TN-55-F-3436 proceeding towards Chengalpet, knocked the first respondent. Due to the impact the appellant sustained grievous injuries and she filed a claim petition before the Tribunal seeking Rs.1,00,000/- as compensation.

4. The Tribunal after analyzing the materials available on record awarded Rs.65,000/- as compensation with 7.5% p.a and the Tribunal observed that the insurance policy does not exist on the date of accident and directed the owner of the offending vehicle/appellant to pay compensation to the first respondent.

5.Challenging the same the appellant has come up with this appeal.

6.The learned counsel for the appellant submitted that the offending vehicle was insured with United India Insurance Company/3rd respondent and produced the insurance copy before this Court, which shows the date of insurance as 17.01.2005.

7. The learned counsel for the the second respondent/Insurance company contends that the accident took place on 11.02.2005, whereas the validity of the policy expires on 13.01.2005 and it was not renewed by the appellant. This being the factum of the case, this respondent is not liable to pay any compensation to the claimant.

8. On a perusal of the award passed by the Tribunal it is seen that the copy of the Insurance policy with the second respondent was marked as R.W.1 and the premium receipt was marked as R.W.2.

9. This Court observes only after filing of this appeal before this Court the United India Insurance Company/3rd respondent was impleaded as a party. If the appellant is well aware of the fact, that already the policy exists with the

United Insurance Company at the time of filing of appeal itself, the United India Insurance Company should be added as a party.

10. The Court further observes that, why the appellant has not challenged the award before the Tribunal based on the policy taken with the 3rd respondent/United Insurance Company, as the learned Judge who had passed the award has power to recall the order, based on newly disclosed facts and evidence. Nothing prevented them from marking any documents or producing any evidence before the Tribunal. When the best evidence / document available with the appellant herein was not examined / marked before the Tribunal, it cannot be permitted to contend at the later stage, there were some valuable evidence available with them. The learned counsel for the appellant sought permission of this Court to withdraw the amount ordered by the Tribunal, but this Court is not inclined to do so.

11. Therefore, this Court is of the view that the order passed by the learned Sub Ordinate Judge in M.C.O.P.No.60 of 2005, Madurantakam has to be interfered. Accordingly the impugned order is set aside and the matter is remitted back to learned subordinate Judge, Madurantakam for consideration.

12. The learned Judge is directed to consider the authenticity of the Insurance Copy with the 3rd respondent and dispose the case on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this Judgment. The 3rd respondent can be added as a party in the present M.C.O.P.No.60 of 2005 before the Court below.

13. Therefore, the present Civil Miscellaneous Appeal stands allowed and the award passed by the learned Subordinate Judge in M.C.O.P.No.60 of 2005, Madurantakam is set aside. No costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Madurantakam.

+lcc to Mr.C.Paranthaman, Advocate, S.R.No.7823
+lcc to Mr.M.Krishna Moorthy, Advocate, SR.7791
+lcc to Mr.T.Thiyagarajan, Advocate, SR.8247

C.M.A.No.1528 of 2010
and
M.P.Nos.1 and 2 of 2010

MP (CO)
CB (29/04/2021)