IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2361 of 2009
and M.P.No.1 of 2009

The United India Insurance Company Ltd.
Ranipet. ... Appellant /2nd Respondent

Vs.

1.C.Sasikumar

2.R.Pazhani ... Respondents/Petitioner /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2006 made in M.A.C.T.O.P.No.276 of 2003 on the file of Motor Accident Claims Tribunal, Sub Judge, Ranipet.

For Appellant : Mr.S.J.Jagadev

J U D G M E N T

The matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 29.06.2006 made in M.C.O.P.No.276 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Ranipet.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.276 of 2003 on the file of Motor Accident Claims Tribunal, Sub Court, Ranipet. The 1st respondent filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.05.2003.

3.According to the 1st respondent, on the date of accident i.e., on 13.05.2003, at 01.45 p.m., one Suresh Babu was riding the moped along with the 1st respondent as a pillion rider from Ranipet to Arcot near the Bridge, the lorry belonging to the 2nd respondent, which came from behind, driven by its driver in a rash and negligent manner, hit the moped and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and the appellant.

4.The 2nd respondent, owner of the lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the lorry filed counter statement denying the averments made by the 1st respondent and stated that one Shanmugam, owner of the lorry, has sent a cheque dated 19.12.2002 to the appellant/Insurance Company for a sum of Rs.3,917/- being payment for premium towards Insurance policy and the same was dishonoured. Therefore, the said Insurance policy was cancelled on 20.12.2002 and the same was informed to the said Shanmugam on 06.03.2004 to surrender the policy. The RTO, Ranipet, has also intimated the same to said Shanmugam. Therefore, on the date of accident, there is no insurance coverage for the vehicle involved in the accident and hence, the 1st respondent is not entitled to claim compensation from the appellant/Insurance Company and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Riyaz Ahamed, was examined as P.W.2 and marked seven documents as Exs.P1 to P7. The appellant/Insurance Company examined one Ragu, Senior Assistant of the appellant/Insurance Company as R.W.1 and marked five documents as Exs.R1 to R5.

7.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 lorry belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of Rs.75,000/- as compensation to the 1st respondent.

8.Against the said award dated 29.06.2006 made in M.C.O.P.No.276 of 2003, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the liability on the appellant, when there was no insurance policy in force on the date of accident. The cheque issued for premium for the policy was dishonoured and the same was returned by the drawee bank. The appellant cancelled the policy and intimated by letter dated 06.01.2003. The accident has occurred on 13.05.2003 after cancellation of policy. Hence, the appellant is not liable to pay compensation to the 1st respondent. The policy was issued in the name of Shanmugam and in the claim petition and in the Motor Vehicle Inspector's Report, the name of the owner was shown as R.Palani, S/o.Ramamoorthy. There was no privity of contract between the appellant and the said R.Palani. The Tribunal failed to consider the above materials, fixed liability on the appellant and prayed for setting aside the award of the Tribunal and for allowing the appeal.

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

11.It is the contention of the learned counsel appearing for the appellant that the cheque dated 19.12.2002 was dishonoured and returned by the drawee bank and the policy was cancelled on 20.12.2002. The cancellation of policy was intimated to the said Shanmugam on 06.01.2003. The accident has occurred on 13.05.2003. There was no policy in force, when the accident occurred. The appellant examined one Ragu, Senior Assistant of the appellant/Insurance Company as R.W.1 and marked the letter dated 06.01.2003 as Exs.R3 and R4 for having intimated to the said Shanmugam. The appellant has not filed any document to show that the said intimation was sent to Shanmugam and he received the same. The appellant has not filed postal acknowledgment card for having served the letter on Shanmugam before the date of accident or to the concerned RTO. In Ex.P3/Motor Vehicle Inspector's Report, it has been mentioned that the policy was in force till 19.12.2003. The Tribunal considering the above materials and failure on the part of the appellant to prove that the cancellation of policy was intimated to the owner of the lorry and concerned RTO, has held that the policy was in force on the date of accident and the appellant is liable to pay the compensation. It is well settled that unless the cancellation of policy is intimated to the owner and concerned RTO before the date of accident, policy will be in force for the entire period.

12.For the above reasons, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.75,000/- 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 entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kj

To

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

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

C.M.A.No.2361 of 2009
and M.P.No.1 of 2009

kk[co]
srg 07/05/2021