IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1478 of 2011
and M.P.No.1 of 2011

(Through Video Conferencing)

The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Officers Line, Vellore. ... Appellant/
2nd Respondent

vs.

1.Ubenthiran
2.Sivadevan … Respondents/ Petitioner
& 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P.No.777 of 2003 dated 09.02.2011 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court) Tiruvannamalai.

For Appellant : M/s.R.Sivakumar

For R1 : Mr.S.C.Vishwanath

J U D G M E N T

The Insurance company is the appellant and is aggrieved by the impugned Judgment and decree dated 09.02.2011 passed by the Motor Accidents Claims Tribunal (Principal Sub Court) Tiruvannamalai in M.A.C.T.O.P.No.777 of 2003. For brevity hereinafter referred to as the Tribunal and the impugned order respectively.

2. By the impugned order, the Tribunal has awarded a sum of Rs.4,39,485/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st respondent-claimant .

3. This Civil miscellaneous appeal has been filed by the appellant Insurance Company primarily on the ground that the insured auto of the 1st respondent was not involved in the

accident. Alternatively it was submitted that the compensation awarded was excessive.

4. In the claim statement, it was stated that on 03.04.2002 at about 9.00 p.m. when 1st respondent was travelling as a passenger in the insured auto bearing Reg.No.TN-25-A-9408 from Thiruvannamalai to Thandrampattu Road, opposite Tjhamarai Tank , the driver of the said auto drove the same in a rash and negligent manner and capsized the auto as a result of which the 1st respondent sustained injuries.

5. The learned counsel for the appellant-insurance company submits that the Tribunal erred in awarding the compensation of Rs.4,39,485/- inasmuch as the insured auto was not involved in the accident. It is further submitted that even otherwise, the first respondent claimant was working as a driver in the State Transport Corporation and was said to be earning a sum of Rs.3,000/- as income and therefore the Tribunal erred in awarding a sum of Rs.1,20,000/- as compensation towards loss of income.

6. Before the Tribunal, the appellant had examined four witnesses viz., R.W.1 to R.W.4, the Special Head Constable, Regional Transport Officer, the Investigator appointed by them and their officers to substantiate that the insured auto belonging to the 2nd respondent bearing Reg.No.TN-25-A-9408 was not involved in the accident particularly in the light of the fact that the accident had taken place on 03.04.2002, where as the FIR was filed on 21.01.2003 after the delay of 293 days .

7. It is further submitted that the driver of the auto bearing Reg.No.TN-25-A-9408 was not having valid and effective driving licence at the time of accident.

8. The learned counsel for the 1st respondent-claimant submits that the 1st respondent travelled in the insured auto belonging to the 2nd respondent and met with an accident when the auto driver of the insured auto drove it in a rash and negligent manner as a result of which the auto capsized and he suffered injuries all over his body including head was under treatment for six months and therefore he could not file FIR or application for claiming the compensation earlier. It is further submitted that the 2nd respondent in his counter and admitted that the accident took place when the driver of the auto belonging to the 2nd respondent drove the insured auto in a rash and negligent manner and that a complaint was filed subsequently against the 2nd respondent.

9. I have considered the arguments advanced by the learned counsel for the appellant and the 1st respondent. I have also perused the evidence of R.W.1 to R.W.4.

10. R.W.3 the Investigation Officer in his deposition has clearly admitted the involvement of the insured auto in the accident on 03.04.2002. He has also admitted that as per his investigation, the auto was being driven by the Driver Rayar whose licence had expired on 26.08.2001 and the driver of the auto did not possess the badge for driving the auto. R.W.3 has also accepted that the 1st respondent-claimant met with an accident when he was travelling in the insured auto on 3.4.2002.

11. R.W.2 the officer of the Regional Transport Office merely confirmed that the driver of the auto did not possess the valid licence on the date of accident as the licence had expired on 28.06.2001 but had subsequently, obtained a driving licence for heavy vehicle on 23.05.2007 and a badge on 01.10.2009. To substantiate the same, Ex.R.2 certificate was marked through R.W.2.

12. R.W.4, the officer of the appellant Insurance Company has also confirmed that for the insured auto necessary premium had been paid, though, during cross examination, he deposed that no premium was paid for covering the risk of the driver. However, this ground was not presented by the appellant.

13. On careful perusal of the evidences on record, it stands confirmed that the insured auto was involved in the accident on 03.04.2002, in which, the 1st respondent/claimant was traveling and met with an accident and suffered injuries.

14. That being the case, the case of the appellant Insurance Company that the insured auto was not involved in the accident cannot be countenanced. The Tribunal has recorded the facts on examination at length and has given adequate reasons in the impugned order. I therefore do not find any merits in the present Civil Miscellaneous Appeal filed by the appellant Insurance Company.

15. Since the driver of the insured auto did not possess a valid driving licence on the date of the accident on 03.04.2002, there was indeed a violation of the policy conditions. Therefore, as per the decision of the Hon'ble Supreme Court in Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224, liberty can be given to the appellant Insurance Company to pay the compensation awarded by the Tribunal and recover the same from the owner of the auto, i.e. 2nd respondent herein.

16. Therefore, the appellant-Insurance Company is directed to deposit the amount of compensation awarded by the Tribunal together with interest and cost as ordered by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. Thereafter, the appellant may proceed to recover

the same from the 2nd respondent owner of the auto.

17. On Such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

kkd

To:

1. The Principal Sub Judge,
The Motor Accidents Claims Tribunal,
Tiruvannamalai.

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

+1cc to Mr.R.Sivakumar, Advocate SR.No.33435

C.M.A.No.1478 of 2011
and M.P.No.1 of 2011

SR(CO)
GMY(04/05/2021)