

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1698 of 2013

The New India Assurance Co. Ltd.,
Rep. by its Manager, Divisional Office,
No.92, G.N.Chetty road, T.Nagar,
Chennai - 600 017 ... Appellant/2nd Respondent

..Vs..

1.Murugan ...1st respondent/Petitioner
2.D.Rathinavel ...IInd Respondent/Ist Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.79 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Harur dated 12.06.2012.

For Appellants : Mr.M.K.Krishnamoorthy

For Respondent 1 : No Appearance

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 12.06.2012 passed by the Motor Accident Claims Tribunal (Subordinate Judge at Harur) in MCOP.No.79 of 2009.

2. It is the contention of the Appellant that no policy has been issued by them for the vehicle which caused the accident. It is also their case that cover note which was marked as Ex.P3 is a fake one which was never issued by them. According to them, despite establishing that the cover note is a fake one, the Tribunal has mulcted the liability against the appellant insurance company also.

3. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant. The first respondent has been duly served and the

second respondent has refused to receive the notice and hence, is deemed to have received the notice. The names of the respondents are also printed in the cause list today.

4. The learned counsel for the Appellant drew the attention of this Court to the Additional counter statement filed by the Appellant before the Tribunal on 07.07.2011 wherein they have categorically pleaded that the cover note Ex.P3 is a fake cover note and that no policy has been issued by them for the vehicle which caused the accident. According to him, despite the said categorical pleading, the Tribunal without considering the additional counter statement and not framing any issue as regards the contention of the Appellant that the Cover note filed through the claimant is a fake one, has passed an erroneous award, mulcting the liability on the Appellant also.

5. This Court has perused and examined the additional counter statement dated 07.07.2011, the impugned award as well as the materials and evidence available on record before the Tribunal.

6. Paragraph 3 of the Additional counter statement reads as follows:

"The 2nd respondent company appointed investigator to investigate the said matter. Due to the investigation the investigator obtained cover note copy from the petitioner. The 2nd respondent company sent the same for verification to the policy issuing office. The policy issuing office have been informed that the COVER NOTE IS FAKE ONE. The 2nd respondent herein filed the counter before that, hence the 2nd respondent was not raised that plea in original counter filed before that. The said real facts came to know only at present. Hence, the cover note submitted by the petitioner is fake one. Hence, the 1st respondent vehicle was not insured with 2nd respondent company. Hence the petition is not maintainable against the 2nd respondent. Because there is no insurance coverage at the time of accident.

As seen from the additional counter statement, a categorical stand has been taken by the Appellant that the cover note which was marked as Ex.P3 is a fake cover note. Despite a categorical stand having been taken by the Appellant, the Tribunal has ignored to consider the additional counter statement filed by the Appellant before the Tribunal under the impugned award. The Tribunal has only extracted the averments of the Appellant which is contained in the original counter statement filed by the

Appellant much prior to the filing of its additional counter statement after investigation.

7. The Tribunal in paragraph 4 of its award has extracted the averments contained in the first counter statement filed by the second respondent which reads as follows:

"The respondent denied that the 1st respondent's driver had driven the vehicle in a rash and negligent manner. The 1st respondent's driver had driven the vehicle in a careful manner. While proceeding in tempo towards Harur Chandai, the petitioner without giving any signal suddenly across the road, at that time the 1st respondent's driver tried to stop the vehicle, but the petitioner enclosed and hit the right side projection of the tempo. The 1st respondent's driver had no valid permit, no valid R.C. and F.C. The age and income of the petitioner is not correct. The injury stated in the petition is not correct. The petitioner is not permanently disabled person. Hence the petitioner is liable to be dismissed."

As seen from the above, the Tribunal has totally ignored the additional counter statement filed by the Appellant on 07.07.2011 wherein the Appellant has taken a categorical stand that the cover note Ex.P3 filed through the claimants is a fake one.

8. The Tribunal has also not framed any issue with regard to the contention of the Appellant that the cover note Ex.P3 is a fake one. The issues framed by the Tribunal is (a) Whether the accident occurred due to the rash and negligent driving of the respondent's driver? and (b) Whether the petitioner is entitled for compensation if any how much?

9. In view of the above, there is force in the submission made by the learned counsel for the Appellant that the Tribunal has ignored and failed to consider the categorical stand taken by the Appellant insurance company with regard to the allegation that Ex.P3 (Cover Note) is a fake cover note.

10. For the foregoing reasons, this Court is of the considered view that the matter has to be remanded back to the Tribunal for fresh consideration. Accordingly, the impugned award dated 12.06.2012 is hereby set aside and the matter is remanded back to the file of Motor Accident Claims Tribunal, Subordinate Judge at Harur in MCOP.NO.79 of 2009 and the

Tribunal after permitting both the Appellant as well as the respondents to adduce fresh evidence with regard to their respective contentions, shall dispose of the matter as expeditiously as possible. The amount deposited by the Appellant insurance company before the Tribunal pursuant to the interim order granted by this Court shall continue to remain in deposit till the disposal of the MCOP and shall be paid out to any of the parties depending upon the final result in the MCOP.

11. In the result, this appeal shall stand disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Subordinate Judge
Harur.

Copy to:

The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.1698 of 2013

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