IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.Nos.2414 & 2415 of 2013

M/s.HDFC-Ergo General Insurance
Company Ltd.,
VI Floor, Leela Business Park,
Andheri-Kurla Road, Andheri (E),
Mumbai-400 059.
...Appellant/II Respondent in both Appeals

Vs.

1.Indira ...1st Respondent/Petitioner in CMA.2414/2013

1.N.Sivakumar ... 1st Respondent/Petitioner in CMA.2415/2013

2.S.Devakumar ...2nd Respondent/1st Respondent in both Appeals

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Sub Court), Rasipuram in M.C.O.P.Nos.775 & 776 of 2008 dated 15.09.2012.

For Appellant : Mr.J.Michael Visuvasam in both appeals

For Respondent No.1 : Mr.Ma.P.Thangavel in both appeals

R2 : NA

JUDGMENT

Challenging the award passed by the learned Subordinate Judge, Rasipuram in M.C.O.P.Nos.775 & 776 of 2008 dated 15.09.2012, the present appeals have been preferred by the appellant/Insurance Company.

2.The brief facts of the cases are as follows:

a)On 01.05.2008, at about 7.30 am when the claimants were riding the two wheeler bearing Reg. No.TN-28-F-9642 on Rasipuram to Sendamangalam Main Road near Vellakanavai at Ammapalayam, a mini auto bearing registration No.TN-28-Q-4261 driven by its driver in a rash and negligent manner belonging to the third respondent herein dashed against the two wheeler causing grievous injuries to both the riders/claimants.

b)The Tribunal after analysing the oral and documentary evidence held that the accident had occurred only due to the rash and negligent act of the driver of the Mini Auto which was insured with the appellant herein and hence, directed the Insurance Company to pay the compensation to the claimants.

3.Heard Mr.J.Michael Visuvasam, learned counsel for the appellant and Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the respondents /claimants.

4.The learned counsel for the appellant/Insurance Company submitted that Tribunal had erroneously held that the accident was caused due to the rash and negligent driving of the auto driver instead of fixing the negligence on the rider of the motor cycle without considering Ex.P1/FIR. He submitted that Ex.R1/insurance policy covers only from 28.05.2008 to 27.05.2009 and there was no coverage of the auto on the date of the alleged accident i.e., on 01.05.2008. He further contended that Ex.P12 was marked with objection since the genuineness of the document was disputed by them.

5.It is the submission of the learned counsel for the appellant that the owner of the auto did not produce the original cover note of the policy and he had only produced the copy of the policy issued from 28.05.2008 to 27.05.2009 and hence, the Tribunal ought to have exonerated them from liability due to lack of genuine documents.

6.Moreover, the learned counsel for the appellant submitted that Ex.P12/policy cover note was without seal or stamp of the appellant and hence contended that it is a forged one. He also submitted that the amount awarded under medical expenses, transportation, extra nourishment and pain & suffering are also excessive. Hence, he pleaded that the appeals filed by the appellant should be allowed.

7.Per contra, the learned counsel for the respondents 1 and 2/claimants submitted that the Tribunal after analysing the oral and documentary evidences, had rightly awarded the compensation to the claimants which warrants no interference.

8.I have given careful consideration to the submissions made by the respective counsels.

9.As regards to negligence aspect, the appellant had not examined any witnesses to substantiate the contribution of the rider of the two wheeler to the accident. The driver of the Mini Auto itself has admitted his rash and negligent driving before the Magistrate Court and convicted for the offence which is evident from Ex.P4. Hence, the accident was caused due to the rash and negligent driving of the offending vehicle. Hence, the said findings of the Tribunal with regard to negligence aspect, fixing the same on the part of the driver of the offending vehicle is liable to be confirmed and accordingly it is confirmed. Since the offending vehicle was insured with the appellant and there was no rebuttal evidence by the appellant, the Tribunal had directed the appellant to pay the compensation to the claimants.

10.In regard to policy coverage, the owner of the Auto had produced the insurance policy as well as the cover note of the policy which was issued on 30.04.2008. The appellant contends that the policy coverage was only from 28.05.2008 to 27.05.2009 but the alleged accident took place on 01.05.2008 and therefore, they are not liable to pay the compensation. The learned counsel further submitted that the owner of the offending vehicle had to produce the original cover note and disputed the genuineness of the cover note as if it is a forged one. He also contended that the cover note does not contain the seal or stamp of the authorized person of the Insurance Company. This Court is of the considered view that once the policy cover note is issued, the policy coverage starts from that date i.e., on 30.04.2008 which is evident from Ex.P12 and if the same is disputed, it is the burden of the insurance company to prove the same by producing the registers as the same could not be available with the owner of the offending vehicle. Taking into consideration of the deposition of RW1 that cover note is valid until the policy is delivered to the vehicle owner and since the accident had occurred on 01.05.2008 and the cover note issued was also on 30.04.2008, there is no infirmity or illegality in the order of the Tribunal in regard to compensation. Hence, the said findings of the Tribunal with regard to policy coverage aspect and directing the insurance company to pay the compensation to the claimants is liable to be confirmed as the appellant has not proved that the cover note produced by the owner of the offending vehicle is a forged one and accordingly, it is confirmed.

11.In view of the foregoing reasons, the Civil Miscellaneous Appeals are dismissed, confirming the order passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Rasipuram in M.C.O.P.Nos.775 & 776 of 2008 dated 15.09.2012. The appellant/Insurance Company is directed to deposit the amount awarded by the Tribunal in M.C.O.P.Nos.775 & 776 of 2008, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any, whereupon the claimant would be entitled to withdraw the same forthwith on filing appropriate application before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1.The Motor Accident Claims Tribunal,
(Sub Judge) Rasipuram.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No. 10591
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 10664

C.M.A.Nos.2414 & 2415 of 2013

JP(CO)
GN(25/03/2021)