IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.436 of 2015
and
M.P.No.1 of 2015

The Divisional Officer,
The New India Assurance Company Ltd.,
No.42, Big Street, 2nd Floor,
Thiruvannamalai.
... Appellant/2nd Respondent

Vs.

1.R.Sudhakar ...1st Respondent/Petitioner

2.K.Prabhu ...2nd Respondent/1st Respondent

3.M.Sujatha ...3rd Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.07.2014 made in M.C.O.P.No.268 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Tindivanam.

For Appellant: Mr.Neethi Perumal

For R1 : Mr.G.Jai Siva Ramaraj
for Mr.V.M.Ravichandran

R2 and R3 : Remained Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 15.07.2014 made in M.C.O.P.No.268 of 2010 on the file of Motor Accident Claims Tribunal, Sub Court, Tindivanam.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.268 of 2010 on the file of Motor Accident Claims

Tribunal, Sub Court, Tindivanam. The 1^{st} respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.06.2008.

3.According to the 1^{st} respondent, he was riding his motorcycle near Kanaga Chettikulam, when he was nearing in front of the Government Middle School at ECR, a car belonging to the 2^{nd} respondent driven by its driver in a rash and negligent manner, dashed against the 1^{st} respondent's motorcycle and caused the accident. The 2^{nd} respondent is the owner and the appellant is the insurer of the car. In the accident, the 1^{st} respondent sustained grievous injuries all over the body. Therefore, the 1^{st} respondent has filed the above claim petition claiming compensation.

4.The respondents 2 & 3 remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the car involved in the accident was not insured with the appellant as stated in the FIR and Motor Vehicle Inspector's Report and the appellant is not liable to pay any compensation to the 1^{st} respondent.

6.Before the Tribunal, the 1^{st} respondent, examined himself as P.W.1, one Dr.Ponnappan was examined as P.W.2 and one Kumaresan was examined as P.W.3 and marked seventeen documents as Exs.P1 to 17. On the side of the appellant, one Mani was examined as R.W.1 and three documents were marked as Exs.R1 to R3.

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 car belonging to the 2^{nd} respondent and directed the appellant/Insurance Company to pay a sum of Rs.4,00,000/- as compensation to the 1^{st} respondent and recover the same from the 2^{nd} respondent.

8.Against the said award dated 15.07.2014 made in M.C.O.P.No.268 of 2010, granting compensation to the 1^{st} respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the policy mentioned by the 1^{st} respondent does not belong to offending vehicle of Toyota Qualis Car and the said policy was issued to Hyundai Accent Car. The offending vehicle is only Toyota Qualis Car and the same was not insured with the appellant/Insurance Company. The Tribunal failed to see that the 1st respondent failed to give correct policy number and the policy number mentioned in the claim petition relates to some other vehicle and it does not relate to the offending vehicle. The Tribunal failed to appreciate the evidence of R.W.1/administrative officer of the appellant and the documents marked through R.W.1. The Tribunal erred in holding that the appellant is trying to evade liability, alleging that policy produced by the 1st respondent is fraud policy. In any event, the total compensation is excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

12.From the materials available on record, it is seen that the contention of the learned counsel appearing for the appellant is that the policy mentioned in the claim petition relates to Hyundai Accent Car and the said car belongs to one Prakash, the offending vehicle Toyota Qualis Car is not insured with the appellant/Insurance Company. The 1st respondent fraudulently produced the policy and marked Ex.P17 and the Tribunal failed to properly appreciate the evidence of R.W.1, especially Ex.R3 policy issued to one Prakash for his Hyundai Accent Car. From the materials on record, it is seen that the appellant has not examined the said Prakash, alleged owner of the Hyundai Accent Car for which the policy in question was issued. When the appellant is alleging that fraudulent policy is produced by the 1st respondent, no complaint is given to the police for investigation for the alleged fraud. The Tribunal considering entire materials on record, observed that the appellant failed to prove that the Policy No. 112700/31/08/01/0000302, Ex.P17/policy copy produced by the 1st respondent is a fraudulent one and held that the appellant is liable to pay compensation. There is no error in the said reasoning of the Tribunal.

13.As far as quantum of compensation is concerned, the 1st respondent examined himself as P.W.1 and one Dr.Ponnappan, was examined as P.W.2 to prove the nature of injuries, period of treatment and disability suffered by him. The appellant has not let in contra evidence to disprove the evidence of PW1 & PW2. The Tribunal considering the entire materials, accepted the evidence of 1st respondent as PW1 & PW2 and awarded compensation under different heads which are not excessive, warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,00,000/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount 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, and then recover the same from the 2nd respondent. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected, Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.R.Neethiperumal, Advocate Sr.2866

C.M.A.No.436 of 2015
and
M.P.No.1 of 2015

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srg 24/08/2020