IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 609 of 2015
and M.P. No. 1 of 2015

M/s. National Insurance Company. Ltd.,
Rep. By its Branch Manager,
Dharmapuri. .. Appellant/2nd Respondent

Vs.

1.Madammal ..1st Respondent/Claimant

2.Kulandai .. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.06.2014, made in M.C.O.P. No. 698 of 2004, on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharmapuri.

For Appellant : Mr. S. Vadivel

For Respondents: No appearance (for R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 13.06.2014, made in M.C.O.P. No. 698 of 2004, on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharmapuri.

2.The appellant is the 2nd respondent in M.C.O.P. No. 698 of 2004, on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharmapuri. The 1st respondent who is the claimant filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 03.04.2004.

3.According to the 1st respondent, on the date of accident viz., 03.04.2004, when the 1st respondent was slowly carrying water and walking to her house near Alliyoor bus stop, driver of the Lorry bearing Registration No. TN-D-8595, belonging to the 2nd respondent, drove the vehicle in a rash and negligent manner without following the rules of the road and dashed against the

1st respondent and further dashed against a standing tamarind tree on the road side and caused accident. In the accident, the 1st respondent sustained injuries and has taken treatment in the Government Head Quarters Hospital, Dharmapuri. The 1st respondent filed the present claim petition, claiming compensation for the injuries sustained in the accident.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The appellant contended that the driver of the Lorry belonging to the 2nd respondent drove the vehicle with due care and caution, observing traffic rules. The accident occurred only due to negligence on the part of the 1st respondent and FIR was lodged on basis of the false complaint against the Lorry driver. At the time of accident, the driver of the said Lorry did not possess valid driving license and the Lorry was not insured with the appellant. The 1st respondent has not given any details of the policy. Hence, the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Dr. S. Krishnakumar as P.W.2 and examined Special Sub-Inspector as P.W.3 and marked 11 documents as Exs.P1 to P11. The appellant examined the Assistant Officer of National Insurance Co. Ltd., Dharmapuri as R.W.1 and marked 3 documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent and directed the appellant to pay a sum of Rs.3,51,600/- as compensation to the 1st respondent.

8.Against the said award dated 13.06.2014, made in M.C.O.P. No. 698 of 2004, the appellant-Insurance Company has come out with the present appeal, questioning liability fixed on them.

9.Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fastening liability on the appellant, relying on Ex.P3, Motor Vehicle Inspector's Report. The Tribunal failed to see that the 1st respondent has not given policy number in column no.16 of the claim petition, but she has mentioned the period of policy. The appellant has examined their Assistant Manager as R.W.1 and produced Ex.R3-CD containing particulars of insurance policy and insurer particulars insured with the appellant for the period from 01.03.2003 to 30.04.2005. From Ex.R3, it can be seen that no policy was issued by the appellant to the Lorry bearing

Registration No.TN-D-8595 as alleged by the 1st respondent. The Tribunal ought not to have presumed that the appellant failed to take steps to serve the 2nd respondent. The reason given by the Tribunal for not considering Exs.R1 and R2 is not correct and the Tribunal had taken adverse interference. The Tribunal ought to have dismissed the claim petition on the ground that there is no policy was issued by the appellant for the offending vehicle and prayed for allowing the appeal.

10.Though notice has been served on the 1st respondent/claimant and her name is printed in the cause list, there is no representation for her either in person or through counsel. The 2nd respondent remained exparte before the Tribunal and notice is dispensed with.

11.Heard learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

12.From the materials on record, it is seen that the 1st respondent has alleged that the driver of the Lorry belonging to the 2nd respondent drove the vehicle in a rash and negligent manner and dashed against the 1st respondent and caused the accident. The 1st respondent sustained multiple injuries and filed claim petition, claiming compensation for the injuries sustained by her in the accident. In column no.16 of the claim petition, the 1st respondent has named the appellant as Insurance Company and has furnished the period of Insurance Policy only. According to the 1st respondent, on the date of accident, the vehicle was insured with the appellant and policy was issued by the appellant to the vehicle belonging to the 2nd respondent. The 1st respondent has not produced the insurance policy. The appellant in the year 2010 had issued notice to the 2nd respondent, owner of Lorry, after 6 years of accident, with regard to Insurance Policy. The letter sent by the appellant was returned for want of correct address. The Tribunal taking note of Ex.P3-Motor Vehicle Inspector's Report had stated that in Ex.P3, the registration of offending vehicle, owner of the vehicle, driver of the vehicle and also particulars of Insurance Company and date of expiry are all mentioned. The Tribunal relied on Ex.P3 to hold that vehicle was insured with the appellant at the time of accident. The Tribunal failed to consider that in Ex.P3, policy number was not mentioned. There is nothing on record to show that the 2nd respondent produced copy of the insurance policy before the Motor Vehicle Inspector at the time of inspection of Lorry in question. The Tribunal also failed to properly appreciate Ex.R3 which contains details of particulars of insurance policy issued between 01.03.2003 to 30.04.2005 by the appellant. The reason given by the Tribunal for not accepting Ex.R3 is erroneous, especially when policy number was not furnished by the 1st respondent. The Tribunal ought to have verified Ex.R3 to find out whether any policy was issued for the period between 18.02.2004 to 17.02.2005 for the offending Lorry. On the failure of the Tribunal to verify Ex.R3 and failure on the part of the 1st respondent as well as Motor Vehicle Inspector to furnish policy number, the award of the Tribunal fastening liability on the appellant is erroneous and is liable to be set aside. Accordingly, the portion of the award fastening the liability on the appellant alone is set aside. The 2nd respondent has permitted the driver to ply the vehicle without any valid insurance policy. Hence, the 2nd respondent is liable to pay the compensation awarded by the Tribunal to the 1st respondent.

13.In the result, this Civil Miscellaneous Appeal is allowed and the 2nd respondent, owner of the Lorry is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 698 of 2004. The 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the amount, if any already deposited to the credit of M.C.O.P. No. 698 of 2004 along with interest and costs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Dharmapuri.

+1cc to Mr.S.Vadivel, Advocate SR.No.2602

C.M.A.No. 609 of 2015

VD(CO)
GMY(24/11/2020)