IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2830 of 2013
and M.P.No.1 of 2013

United India Insurance Co. Ltd.,
266, Kabila Towers, 2nd Floor,
Opp: Sai Baba Kovil,
Mettupalayam Road,
Coimbatore - 641043. ... Appellant/2nd Respondent

Vs.

1.Palanisamy
2.Kanesamurthy ...Respondents/Petitioners/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 26.07.2010 made in M.C.O.P.No.633 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional Sub - Court at Coimbatore.

For Appellant : Mr.T.Malar

For Respondents : M/s. Ma.P.Thangavel [R1]
Mr.T.Arunkumar [R2]

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 26.07.2010 made in M.C.O.P.No.633 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional Sub - Court at Coimbatore.

2. The present appeal is filed by the appellant/Insurance Company on the grounds of liability.

3. The second respondent herein, namely, Kanesamurthy, is the owner of the car.

4. Mr.T.Arun Kumar, learned counsel appearing for the second respondent/owner of the car, submitted that he has sent communication to Mr.T.Prakash, the counsel, who appeared for the second respondent herein, before the Court below to get instructions regarding the violation and to verify whether the car was having LPG Gas connection instead of petrol. The said

counsel is no more and hence, the letter sent to the said Advocate was also returned. Hence, they are not in a position to give any instructions regarding the same.

5. Heard learned counsel for the appellant and learned counsel appearing for the respondents.

6. The Insurance Company has filed an appeal stating that the Court below has erroneously come to a conclusion and awarded a compensation to the claimant in the absence of any documentary evidence to show that the accident has occurred due to the negligent driving of the car bearing Registration No. TN 37 S 8984 and the Tribunal has shifted the burden on the appellant and awarded a sum of Rs.44,000/- a meagre amount. The Court below has erred and not applied its mind, as the offending vehicle has installed LPG Gas as fuel instead of petrol without obtaining proper authorization from the road transport authority and this being the major policy violation, the Insurance Company is not liable to pay any compensation to the claimant. The same LPG Connection is not shown in the RC Book as well as the Insurance Policy and hence, the liability cannot be fastened on them. The doctor has assessed only 17% disability and seeks for setting aside of the Award.

7. On going through the claim petition, it is clear that on 16.09.2007 around 2.00 pm, the claimant was driving his bicycle from Chinnavedam Patti, Vasantham Nagar and while he was standing near Ragam Bakery to cross the road, a car bearing Registration No. TN 37 S 8984, driven by its driver in a rash and negligent manner and dashed the claimant, who sustained grievous injuries. He was admitted at Coimbatore Government Hospital and he sustained permanent disability and loss of earning power. He was working as a helper in a cattle farm earning Rs.4,000/- per month salary. He claimed a sum of Rs.2,00,000/- as compensation.

8. A counter was filed by the Insurance Company, denying their liability and in the counter, it has been stated that the claim was repudiated because of the reason that the LPG Gas connection has been installed in the car unauthorisedly by the second respondent herein, without getting proper permission from the Regional Transport Authority and the Court below has not considered the same and merely stated that there is a policy violation and nothing has been discussed about the said policy violation. Accordingly, when there is a conversion of tank from petrol to LPG gas which has to be used for cooking, there is a major violation in the policy and as per the policy, if there is any breach of policy violation, the Insurance Company is not liable to pay any compensation. Accordingly, in the instant case, there is a breach and the same has been proved by filing an additional counter and the same was not disputed and no other evidence has been produced by the claimant or the owner of the vehicle to prove that there is no breach of policy conditions. The

Court below had awarded a sum of Rs.44,000/- as compensation for the claim of Rs.2,00,000/-. The amount is only reasonable and this Court is not inclined to interfere with the same. Regarding the liability, it is for the owner of the vehicle to pay the same and accordingly, the claimant can proceed against the owner of the vehicle. As this being a very meagre amount and as the claimant is also a poor coolieman, he will not be in a position to proceed against the owner to recover the same.

9. Hence, this Court is of the view that the same can be paid by the Insurance Company and recover the same from the owner. The amount which has been deposited, can be collected and the rest of the interest amount can be recovered from the owner of the vehicle. Accordingly, in the above facts and circumstances, the Civil Miscellaneous Appeal is partly allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

The II Additional Sub Judge,
Motor Accidents Claims Tribunal,
II Additional Sub - Court, Coimbatore.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.16773

+1cc to Mr.T.Ravichandran, Advocate SR.No.16058

C.M.A.No.2830 of 2013

VG II(CO)
GMY(04/05/2021)