IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2046 of 2016
and C.M.P.No.14961 of 2016

M/s.United India Insurance Company Ltd.,
TPHUB, Divisional Office No.II,
Sri Ranga Complex, 1st floor,
104-A, Peramanur Main Road,
Salem 636 007. .. Appellant/2nd Respondent

Vs.

1.Dr.R.Sivakumar ..1st Respondent/Petitioner
2.K.P.N.Ramesh ..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.06.2016 made in M.C.O.P.No.885 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.I), Salem.

For Appellant : Ms.I.Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 02.06.2016 made in M.C.O.P.No.885 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.The appellant is the second respondent in M.C.O.P.No.885 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. The first respondent filed the above said claim petition, claiming a sum of Rs.40,000/- as compensation for the damages to the car caused in the accident that took place on 07.07.2013.

3.According to the first respondent, on the date of accident i.e., on 07.07.2013 at about 10.30 p.m., while the first respondent was driving in his car bearing Registration No.TN 46 J 3084 to Perambalur at GST road, a omini bus bearing Registration No. AP 03 TA 6435 belonging to the second respondent insured with the appellant, driven by its driver in a rash and negligent manner, hit the back side of the car and caused the accident. Due to the accident, the rear portion of the car was fully damaged and the car was left with Shiva Automobiles (P) Ltd., Trichy, who is the authorised dealer of Mahindra and Mahindra. They prepared the cost of repairs at Rs.1,75,336.85/-. After repairs, they prepared the Tax invoice receipt for Rs.57,906/-. The first respondent has spent a sum of Rs.6,000/- to tow the car to the workshop. The car was insured with the National Insurance Company, Trichy and the claim was settled for Rs.34,000/- as assessed by the surveyor of the Insurance Company. Hence, the first respondent filed the above claim petition claiming compensation as against the second respondent and appellant.

4.The second respondent, owner of the omni car, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement and denied the averments made in the claim petition. The appellant/Insurance Company have not admitted that the first respondent resided at Sri Sabapathy Ayurveda Hospital, Perambalur and he was a Doctor by profession. They further contended that the first respondent claimed the entire amount towards damages caused to the car from the insurer of his car viz., National Insurance Company Limited and the first respondent has accepted a sum of Rs.34,000/- towards claim bills in full quit as per the terms and conditions of the policy and the said amount was paid to the first respondent. Hence, the appellant is not liable to pay any compensation to the first respondent and prayed for dismissal of the claim petition.

6.Before the Tribunal, the first respondent examined himself as P.W.1 and examined one Palaniyappan as P.W.2 and marked 5 documents as Exs.P1 to P5. On the side of the appellant, one Deenakarunagaran was examined as R.W.1 and marked one document as Ex.R1. On the side of the third party, one document was marked as Ex.X1/copies of survey report, invoice and policy.

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 omini bus belonging to the second respondent and directed the appellant being insurer of the said vehicle to pay a sum of Rs.29,900/- as compensation to the first respondent.

8.Against the said award dated 02.06.2016 made in M.C.O.P.No.885 of 2014, the appellant/Insurance Company has come out with the present appeal fastening liability on them.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the driver of the omni bus was responsible for the accident. The Tribunal failed to consider that the accident has occurred only due to negligence on the part of the first respondent. The first respondent has to claim entire compensation only against his Insurance company. The first respondent having received a sum of Rs.34,000/- from his Insurance Company, is not entitled to claim the balance amount from the appellant. The first respondent has not proved that he actually spent the amount as claimed for reparing the car and prayed for setting aside the award of the Tribunal.

10.Heard the learned counsel appearing for the appelant/Insurance Company and perused the entire materials available on record.

11. From the materials available on record, it is seen that the Tribunal considering the pleadings, oral and documentary evidence, held that the driver of the omini bus belonging to the second respondent dashed on the back side of the car belonging to the first respondent and caused the accident. In the accident, the car belonging to the first respondent was damaged and the first respondent got the car repaired by Siva Automobiles Private Limited and Amman Motors, Authorised Dealer of the vehicle. In addition to that, the first respondent has spent a sum of Rs.6,000/- for towing the car to the workshop for repair. The first respondent has made a claim to his insurer, National Insurance Company, Trichy and the said Insurance Company has paid a sum of Rs.34,000/- to the first respondent. The first respondent has filed claim petition seeking balance amount against the appellant and the second respondent. The omini bus was insured with the appellant at the time of the accident. As per Section 147 (1)(b)(i) of the Motor Vehicles Act, the statutory policy was issued by the Insurance Company like the appellant, which covers third party risk, owner of goods or his authorised representative, who travelled in the goods vehicle as well as damages caused to the goods to the third party. The first respondent is the third party and therefore, the appellant being insurer of the said omini bus is liable to pay the compensation to the first respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.29,900/- along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal 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. On such deposit, the first respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Special Sub Court No.I,
Motor Accident Claims Tribunal,
Salem.

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

+1 cc to Mr.I.Malar, Advocate,sr.16060.

Gj(co)
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