IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3366 of 2013

A.Sakthivel ... Appellant/Petitioner

Vs.

1. P.Bhagrinath Jat

2. ICICI Lambard General India
Insurance Co., Ltd.,
No.140, Chotabai Centre,
Nungambakkam, Chennai ... Respondents/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1998 to set aside the fair and decreetal order passed in M.C.O.P.No.1062 of 2008 dated 14.06.2012 by the Motor Accident Claims Tribunal (II Small Causes Court, Chennai) and allow the appeal.

For Appellant : Mr.S.Parthasarathy

For Respondents: Mrs.R.Sreevidhya for R2

R1 - No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 14.06.2012 made in M.C.O.P.No.1062 of 2008 on the file of the Learned Motor Accidents Claims Tribunal (II Small Causes Court), Chennai.

2. The case of the appellant is that on 06.12.2007 at about 22.45 hrs, the appellant was walking in E.H.Road, Vyasarpadi, Chennai from north to south direction, at that time, a lorry bearing Regn.No.RJ-07-G-4863 came from south to north direction driven by its driver in a rash and negligent manner and came at a dangerous speed and dashed against the appellant Due to the said accident, the appellant sustained grievous injuries and the accident had occurred only due to the negligence act of the lorry driver. Thereafter, the appellant had taken treatment as

inpatient in Govt., STanley Hospital, chennai, he was a self employed person and was earning a sum of Rs.6,000/- per month and he is not able to carryout his duties, as he was doing before. Hence, he filed a claim petition before the Learned Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, claiming a sum of Rs.6,00,000/- as compensation from the respondents, as the accident had occurred only due to the rash and negligent driving of the 1st respondent's driver and the said vehicle is insured with the 2nd respondent .

3. Denying the allegations, the 2nd respondent filed a counter affidavit stating that a cheque bearing No.890132 for Rs.14,480/- towards premium has been returned by his banker without effecting payment. Hence there was failure of consideration, which made the contract void from the inception of the policy and this particular defence is also available to the insurer in terms of Section 149 (2) of Motor Vehicle Act. Further, the cheque has been returned by the banker as well as the policy cancellation from inception was informed by the 2nd respondent to the 1st respondent vide ref. No.70836-Nov'07/NI dated 29.11.2007 and the accident took place on 06.12.2007 and hence the 2nd respondent deny the liability, since there was no insurance on the date of accident, thereby sought to dismiss the claim petition.

4. The Tribunal after considering the pleadings, counter pleadings and the materials available on record has awarded a sum of Rs.1,33,000/- to the appellant by directing the 1st respondent / owner of the vehicle to pay the same and the same is tabulated as follows:-

S.No.	Description	Amount
1.	Loss of Income for 3 months at the rate of Rs.3,000/- per month.	18,000
2.	Transportation	5,000
3.	Extra Nourishment	5,000
4.	Medical Expenses	5,000
5.	Pain and Sufferings	10,000
6.	Disability of 45% at the rate of Rs.2,000/- per disability	90,000
	Total	1,33,000

5. Aggrieved by the award, the appellant / claimant has filed this appeal before this Court stating that the Tribunal has committed a serious error in fastening the liability on the 1st respondent / owner of the vehicle and exonerated the insurance company. The Tribunal failed to note that the 2nd

respondent, as a insurer, has to compensate the appellant and thereafter recover the same from the 1st respondent and in support of his contention, he has relied on the Judgment of Hon'ble Supreme Court reported in (2012) 5 Supreme Court Cases 234 [United India Insurance Company Ltd., V. Laxmamma and Others] wherein it is held that the 'Insurer's liability against third-party risk, the extent of, when cheque issued for payment of premium was dishonoured and subsequent to the accident, insurer cancelled policy of insurance, held, in such circumstances, statutory liability of insurer to indemnify third parties which policy covered subsists and insurer has to satisfy award of compensation unless policy of insurance was cancelled by insurer and intimation of such cancellation had reached insured before the accident'.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. Though the notice was served to the 1st respondent as early as on 24.01.2014 and his name is printed in the cause list, there is no representation on behalf of him either-in-person or through learned counsel.

7. It is seen that now the dispute is only with regard to fixing the liability on the 1st respondent and completely exonerating the 2nd respondent / Insurance company and as far as the quantum of compensation is concerned, there is no dispute.

8. On perusal of the award dated 14.06.2012 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in M.C.O.P.No.1062 of 2008, it is observed that the appellant in order to prove that the second respondent's driver is the cause for the alleged accident marked FIR copy as Ex.P1 which was against the second respondent's driver, but the second respondent's driver was not examined and has not proved his case before the Tribunal, and therefore, the Tribunal has rightly came to the conclusion that the second respondent's driver is the cause for the alleged accident.

9. Further, it is observed that the 2nd respondent / insurance company has contended before the Tribunal that the Cheque No.890132 for Rs.14,880/- was issued by the 1st respondent towards insurance premium for the insurance coverage of the vehicle involved in the accident and the same was returned, as such, policy was cancelled from the date of inception and the same was also intimated to the 1st respondent vide letter dated 29.11.2007 and R.T.O, which are marked as Ex.R1, and Ex.R.2 and the accident had occurred on 06.12.2007, [viz., after cancellation of insurance policy], as per which, the Tribunal had fastened the liability on the 1st respondent. This Court is not in agreement with the said contention because

of the reason, when the 2nd respondent has produced the intimation letter dated 29.11.2007 cancelling the policy, definitely, they ought to have marked the receipt of endorsement from the 1st respondent, without the same, merely fastening the liability on the 1st respondent and exonerating the insurance company, cannot be accepted.

10. Accordingly, the 2nd respondent / Insurance company is directed to deposit the entire award amount i.e., Rs.1,33,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the 1st respondent / owner of the vehicle. On such deposit being made, the appellant / claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judge,
   Motor Accidents Claims Tribunal (II Court of Small Causes),
   Chennai.

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

+1cc to M/s.S.Parthasarathy, Advocate Sr.12543
+1cc to M/s.R.Sree Vidhya, Advocate Sr.13024

C.M.A.No.3366 of 2013

cp[co]
srg 18/08/2020