IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2254 of 2016

C.M.P.No.15922 of 2016

National Insurance Company Limited,
33, Brahma Nadu Road,
Contonment-Trichy-1. ..Appellant/ 2nd respondent

Vs.

1.Arun kumar
son of Kanagaraj

2.Arun kumar
son of Krishnamoorthy. ..Respondents/ Petitioner/ 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 30.04.2015 passed in M.A.C.T.O.P.No.503 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

For Petitioner : Mr.N.B.Surekha

For Respondents : Mr.R.P.Murugan Raja for R1
Non-appearance for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 30.04.2015 passed in M.A.C.T.O.P.No.503 of 2014 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.

2.The accident occurred on 21.08.2014 at about 11.00 a.m at Mela Theru Kattupudur Privu Road on Trichy to Salem Road. Thoottam Police Station registered a complaint in Crime No.241 of 2014 under Section 279 I.P.C. The claim petition reveals that the petitioner was a rider of the vehicle bearing Regn.No.TN 47 AY 1368, Hero Honda Passion Two wheeler and met with an accident and due to that, the first respondent/claimant sustained multiple grievous injuries all over the body including left leg below knee centre side fractured. The petitioner was admitted in Government Hospital, Thottiam on 21.08.2014 for one day as out patient and then admitted in Government Hospital, Musiri on 21.08.2014 for one day as out patient and then admitted in Senthil Private Hospital, Musiri for five days as inpatient. Operation done and plate fixed. The claim petition was filed seeking a compensation of Rs.10,00,000/-.

3. The appellant/Insurance Company filed a counter affidavit by stating that the accident did not happen in the manner as set out in the petition. The claimant/first respondent, at the time of accident, was not possessing a valid driving license and he drove the two wheeler in a rash and negligent manner and resulted in an accident. Thus, the claimant is a tortfeasor and therefore, he alone is liable for accident and the Insurance Company is not liable to pay the compensation. The Tribunal adjudicated the issues, with reference to the documents and evidences produced by the respective parties and arrived at a conclusion that on account of negligence on the part of the claimant, accident occurred and further, the claimant was not possessing a valid driving license, at the time of the accident. Though the Tribunal categorically found that the claimant was not possessing a valid driving license at the time of accident, the Insurance Company is liable to pay the compensation, in view of the fact that policy was in force and there is a coverage. With reference to the grounds raised by the appellant/Insurance Company that the claimant is a trot-feacsor, was not considered by the Tribunal. Contrarily, the Tribunal concluded that the policy is in force and therefore, the claimant is entitled for compensation.

4. Such an approach of the Tribunal is erroneous, in view of the fact that it is not sufficient, if the policy is inforce and it is not sufficient, if there is a coverage in the policy. It is necessary that the conditions of the policy are complied with and also the tribunal is bound to look into the provisions of the Motor Vehicles Act and Rules. If any violations are committed, with reference to the provisions of the Motor Vehicles Act and the accident occurred also falls within the ambit of the terms and conditions of the policy, then the Insurance Company may not be liable to pay the compensation. In other words, even in case where the policy coverage is established, if there is a violation of the provisions of the Motor Vehicles Act and Rules, then also, the Insurance Company is not liable to pay compensation. Thus, all these factors are to be considered by the Tribunal, while awarding the compensation. It is not as if the Tribunal can just verify the existence of policy and genunity of the accident and grant compensation. The provisions of the Act and rules and with reference to the terms and conditions of the Insurance Policy are to be adjudicated for the purpose of arriving a conclusion.

5. In the present case on hand, the accident was established and the coverage policy was also established. It is proved beyond doubt that the claimant was not possessing a

valid driving license at the time of accident and this apart, in respect of driver, who is not a owner, there is no coverage in the policy also. Accordingly, there is no coverage in the policy as the claimant himself was driving the vehicle and he is not a registered owner. This apart, he was not possessing a valid driving license, at the time of accident.

6. This being the factum established, the Tribunal has committed an error in granting the compensation and accordingly, the judgment and decree dated 30.04.2015 passed in M.A.C.T.O.P.No.503 of 2014 is quashed and the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

7. The learned counsel for the appellant made a submission that 50% of the award amount has already been deposited. Thus, the appellant is permitted to withdraw the said amount with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Perambalur.

Copy to

The Section Officer,
VR Section
High Court, Madras

1 cc to Mrs.N. B. Surekha, Advocate, Sr. 20521
1 cc to M.R.P. Murugan Raja, Advocate, Sr. 21228

C.M.A.No.2254 of 2016

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