IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.11.2020	Pronounced on: 04.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2503 of 2016
& C.M.P.No.17731 of 2016

The Manager,
HDFC Ergo Insurance Company Limited,
Rajahmundry, Andhra Pradesh. ...Appellant

/versus/

1. Karthick, S/o.Chandirasekar,
   Door No.37, Lalpettai Sivan Koil Street,
   Kattumannar Kovil Taluk,
   Cuddalore.

2. Sathiyanarayana,
   S/o.Venkata Rao,
   89-2-5/2, Gayatri Nagar,
   Rajahmundry, Andhra Pradesh. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.161 of 2014 dated 28.04.2016, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Ariyalur.

For Appellant : Ms.Harini,
for Mr.N.Vijayaraghavan

For R1 : No appearance

For R2 : *ex parte*

JUDGMENT

(The case has been heard through video conference)

This Appeal is preferred against the award passed by the Motor Accident Claims Tribunal, Ariyalur, alleging that the Tribunal erred in fixing the liability on the Appellant/Insurance Company. In spite of ample evidence placed before the Tribunal that the offending vehicle involved in the accident was not insured under Appellant/Insurance Company, the Tribunal has ordered the appellant to pay compensation to the claimant.

2. The short facts of the case is that on 11.11.2013 at about 6.30 p.m, the claimant, in his two wheeler bearing registration No.TN-62-D-9012 was travelling towards Meenasurity to Nellithope road. Near Meensurity Electricity Board Office, a Chevrolet Tavera Car bearing registration No.AP-31-AP-7889 coming from opposite direction, rash and negligently dashed against the two wheeler. The claimant sustained severe injury and was taken to the Government

Hospital. He was treated as inpatient for his injuries on the head, fracture of left leg and abrasion all over his body. He has claimed that, he was earning Rs.15,000/- per month as an auto driver and due to the accident, he has lost his income and future hence sought for compensation of Rs.10,00,000/-.

3. The claim petition was resisted by the Insurance Company on the ground that the accident occurred due to negligence of the claimant and he has contributed for the accident besides the 1st respondent vehicle was not insured under the respondent and there is no policy coverage as on the date of accident.

4. Before the Tribunal, the claimant examined 3 witnesses and marked 8 Exhibits. On behalf of the Insurance Company, 1 witness and 6 Exhibits were marked. The documents from R.T.O was called for and they were marked as Ex.X.1 and Ex.X.2.

5. The Tribunal, on considering the material evidence, awarded a sum of Rs.1,40,268/-. In this appeal, the insurer has stated that the tribunal failed to consider the acknowledgement slip referred to Motor Vehicle Inspector report is a forged document, which was actually issued by the Insurance Company to another customers and for another vehicle.

6. The Tribunal failed to appreciate the evidence of R.W.1 and Ex.R.1 and Ex.R.2 which was the actual acknowledgement slip issued to a Bolero Car and Ex.R.3, the Policy Copy pertaining to the vehicle referred in Ex.R.4.

7. It is a specific case of the appellant is that the acknowledgement slip relied by the claimant was issued for a vehicle bearing Registration No.AP-06-TA-3152 owned by Mr.Gunttala Sathyanarayana. The said acknowledgement slip has been manipulated by the claimant as if it was issued to Chevrolet Tavera Car owned by D.Sathyanarayan S/o.Venkata Rao.

8. Heard the Learned Counsel for the appellant and records perused.

9. The specific case of the claimant is that the two wheeler was hit by a Chevrolet Tavera Car bearing registration No.AP-31-AP-7889 owned by V.Sathiyanarayana and said vehicle was under insured with Appellant/Insurance Company.

10. To prove the same, the claimant has examined P.W.3, who is the

Motor Vehicle Inspector. Through him, he has marked Ex.X.1 and Ex.X.2, which is the Motor Vehicle Inspector report and the photocopy of the Insurance Policy acknowledgement slip. From these two documents, we find that the offending vehicle is Chavrolet Tavera Saloon 2006 LMV Car bearing registration No.AP-31-AP-7889. The owner of the car is Thiru.Satyanarayan, S/o.Venkata Rao. Ex.X.2 is the acknowledgement slip bearing No.002301904651 of the Appellant/Insurance Company. It is not the Policy Note for the vehicle. The Officer of the Insurance Company, who was examined as R.W.1 has disowned the genuineness of the acknowledgement slip marked as Ex.X.2. Through R.W.1, the Insurance Company has marked the actual original acknowledgement slip bearing No.002301904651 with bar code. This acknowledgement slip is pertaining to Mahindra Bolero Camper car bearing registration No.AP-05-TA-3152. The owner of the vehicle is Thiru.Guttula Sathiyanarayana S/o.Somaiya.

11. The Tribunal has failed to compare and appreciate Ex.X.2 and Ex.R.1, which is the Insurance Policy acknowledgement slip issued by Appellant/Insurance Company. While the acknowledgement slip relied by the claimant being the photocopy does not have the bar code, the documents marked by the Insurance Company produced from their records having the bar code with all relevant details required in the Form being filled up properly and clearly shows his authenticity and originality. Ex.R.1 pertaining to different vehicle owned by a different person. While so, somebody has misused the printed format of the Insurance Company to make believe that the offending vehicle is duly insured. When the Insurance Company has produced the relevant documents to establish that Ex.X.1 is not a original acknowledgement slip and it does not prove the factum of valid insurance. The Tribunal has miserably failed to properly appreciate the document.

12. On perusing the records, this Court clearly finds that Ex.X.2 is not a Policy Note. It is not a proof for valid insurance. Whereas, Ex.R.1 is the copy of the Insurance policy acknowledgement and Ex.R.3 the policy copy. Both these documents clearly shows that the policy acknowledgement relied by the claimant is a forged document and same policy acknowledgement Number with bar code prove to be an insurance document for Bolero car and not the Tavera Car, which is the offending vehicle in the present case.

13. The Tribunal has miserably omitted even to discuss about the documents of the Appellant/Insurance Company and has pre-judged the issue and fixed the liability on the Insurance Company, which has not collected any premium from the owner of the offending vehicle. Hence, the ***Civil Miscellaneous Appeal is allowed.*** The Insurance Company is exonerated from their liability. The claim amount of Rs.1,40,268/- shall be recovered by the claimant from the 2nd respondent, who is the owner of the offending vehicle. No costs. Consequently, connected Miscellaneous Petition is closed.

04.11.2020

Index :Yes/No.
Speaking order/Non-speaking order
bsm

To:
1. The Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Ariyalur.
2. The Section Officer, V.R.Section, High Court, Madras.

Dr.G.Jayachandran,J.

bsm

Pre-delivery Judgment in
C.M.A.No.2503 of 2016
& C.M.P.No.17731 of 2016

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