IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.275 of 2016
and
CMP No.2312 of 2016

ICICI Lombard General Insurance Company Ltd.,
United Arcade,
3rd Floor, Annamalai Nagar,
Karur Bye-Pass Road,
Thillainagar,
Trichy. ....Appellant/2nd Respondent

Vs

1.Ashokan ...1st Respondent/Petitioner

2.Vijay Anandh ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2014 made in M.C.O.P.No.120 of 2012 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : M/s.R.Sreevidhya

For Respondents : No Appearance

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant. No representation for the respondent, though paper publication was effected.

2. This appeal is filed by the Insurance Company on the ground that the Tribunal was erred in allowing the claim petition inspite of establishing the fact that the Insurance

policy produced by the claimant is a fake policy and not a genuine policy issued by the Insurance Company.

3. This is a case, where the claimant filed claim petition for compensation of Rs.3,00,000/- for the alleged accident occurred on 22.10.2010, while he was proceeding in a two wheeler in Trichy Chennai NH45 road near Irur bus stop. A maruthi car bearing Registration No.TN22 AT 2768 owned by the first respondent viz., Vijyay Ananth hit him causing grievous injuries all over the body from head to knee. Since he sustained laceration in parietal region, laceration in post parietal region, punctured wound in occipital region, abrasion in right elbow, abrasion and laceration in left foot and fracture in left ankle bone, he has laid claim petition against the owner of the Maruthi car and the appellant herein alleging that the vehicle has been insured under then.

4. The Insurance Company has taken a specific defense that the vehicle was not insured under their Company and there is no privity of contract between the offending car owner and the Insurance Company.

5. Before the Tribunal, the claimant has filed ten documents, in which Ex.P10 is the xerox copy of the Insurance policy. On behalf of the respondents, two documents were marked. One is Ex.R.1, the copy of the Insurance Policy issued by the Insurance Company to show that the format and design in vogue is different from the insurance policy produced by the claimant and marked as Ex.P10. Also, R.W.1, the Legal Manager of the Insurance Company has spoken about the investigation conducted regarding the policy produced by the claimant and report with regard to the policy status and policy stage of the vehicle marked as Ex.R2.

6. The Tribunal disbelieved the plea of the Insurance Company on the ground that the Insurance Company has not lodged any complaint regarding fake insurance policy and also, the investigation report alleged to have been conducted by R.W.1 regarding fake policy not produced before the Court. For these reasons, the Tribunal declined to entertain the plea of the Insurance Company that Ex.P10 is a fake policy and has awarded a sum of Rs.2,26,000/-.

7.When the Insurance Company has taken a specific defense that the vehicle was not covered under them and prima facie established before the Tribunal that the policy relied by the claimant is not the document issued by the Insurance Company, the Tribunal ought to have not accepted the in-genuine policy. The owner of the vehicle has remained exparte, so the Tribunal ought to have suspected the source through which Ex.P10 came to the hands of the claimant.

8.Further, it is also submitted by the learned counsel for the appellant that since there was huge racket regarding fake insurance policy, complaints are given in the respective districts about fake insurance policy and they are under investigation. While so, the Tribunal ought not to have relied upon the photo copy of the Insurance policy, which purported to have been issued by the appellant, Insurance Company. The evidence of the R.W.1 and Ex. R-1 compared with Ex.P-10 proves beyond doubt Ex.P10 was issued by the appellant company.

9. The conduct of the claimant, who has not turned up to this Court inspite of notice and paper publication reinforce the stand taken by the appellant that on the basis of fake insurance policy, the claimant wants to enrich himself.

10. The Tribunal has miserably failed to test the genuineness of the photocopy of the Insurance policy Ex.P10, inspite of ample evidence to establish that it is a fake document. In the said circumstances, this Court has no hesitation to set aside the award of the Tribunal and allow the Civil Miscellaneous Appeal. Accordingly, the award passed by the Tribunal in M.C.O.P. No.120 of 2012 is set aside and the Civil Miscellaneous Appeal is allowed.

11. Learned counsel for the appellant submitted that the entire award amount has been deposited in the MCOP account. In such case, the appellant Insurance Company is at liberty to withdraw the said amount with the interest accrued if any in view of the order passed by this Court.

12. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vri

To

Motor Accidents Claims Tribunal,
Principal District Judge, Perambalur.

+1cc to M/s.R.Sreevidhya, Advocate SR.No.39011

CMA No.275 of 2016

PVS(CO)
GMY(0709/2021)