

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.819 of 2016

And

C.M.P.No.6621 of 2016

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishna Street,
Tiruvannamalai.

..Appellant/R-3

vs.

1.Suresh Kumar

..1st Respondent/Petitioner

2.Sathish Kumar

..2nd Respondent/R-1

3.The Divisional Manager,
The New India Assurance Co. Ltd.,
No.106, First Floor, Big Street,
Tiruvannamalai Town and District.

..R-3/R-2

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2015 passed in M.C.O.P.No.347 of 2011 on the file of the learned Additional Sub Judge (FAC), Additional Sub Court-cum-Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy

For Respondent-1 : Mr.G.Suresh

For Respondent-2 : Ex Parte

For Respondent-3 : Given up

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 16.07.2015 passed by the learned Additional Sub Judge (FAC), Additional Sub Court -cum-

2. The learned counsel appearing on behalf of the appellant mainly contended that the Tribunal has erroneously fixed the liability on the Insurance Company despite the fact that there is no coverage of policy.

3. The accident occurred on 04.06.2011 at 16.00 hours in Tiruvannamalai to Avalurpettai Road, near Puliyangulam, Tiruvannamalai Taluk. Mangalam Police Station registered a case in Crime No.282 of 2011 under Sections 279, 337 and 338 of IPC.

4. The claimant sustained injuries of fracture of centre nasal bone injuries all over the body.

5. The claim petition was filed seeking the compensation of Rs.5 lakhs and the Tribunal adjudicated the issues as raised between the parties.

6. The main ground raised by the appellant is that the policy was marked as Ex.R-1 document and as per the policy, the P.A. Cover under Section III for Registered Owner cum Driver (CSI) is Rs.1,00,000/-. In view of the limited policy, the claimant is not entitled for any damages, as there is no coverage. Contrarily, the Tribunal has proceeded on the basis that there is a policy and the factum regarding the accident was established and therefore, the claimant is entitled for compensation.

7. This Court is of the considered opinion that beyond the accident, which is to be established and apart from other factors, the claimant has to basically establish that the policy exists, covering the claim set out in the claim petition. Therefore, mere accident or the disability or other factors, are to be considered by the Tribunal undoubtedly. However, the factum regarding the coverage of the claim set out in the claim petition and the existence of the policy and the terms and conditions agreed between the parties in the policy are also to be considered while awarding compensation.

8. The policy is a contract. The terms and conditions stipulated in the policy are undoubtedly binding both the policy-holder as well as the Insurance Company. This being the principles to be followed, the Tribunal, at the first instance, is bound to find out whether there is a coverage and such coverage is in force at the time of accident or not. In the present case, there was a policy, however, there is no coverage as far as the claimant is concerned.

9. In the present case, the claimant Mr.Suresh Kumar is the brother of the second respondent Mr.Sathish Kumar. Admittedly, the vehicle which met with an accident stands in the name of the second respondent Mr.Sathish Kumar and this apart, the facts established before the Tribunal reveals that at the time of accident, the claimant Mr.Suresh Kumar was driving the vehicle. Thus the claimant is not covered under the policy and his brother, who is the second respondent alone is covered under the policy and therefore, the Tribunal has committed an error in awarding the compensation. When the policy unambiguously states that the coverage is for the registered owner cum driver, the claimant Mr.Suresh Kumar is not a registered owner and therefore, he is not covered under the policy.

10. This being the factum, the Tribunal has committed an error in awarding the compensation and the findings in this regard are perverse. Accordingly, the judgment and decree dated 16.07.2015 passed by the learned Additional Sub Judge (FAC), Additional Sub Court-cum-Motor Accidents Claims Tribunal, Tiruvannamalai in M.C.O.P.No.347 of 2011 is set aside. Consequently, C.M.A. No.819 of 2016 stands allowed. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

11. The learned counsel appearing on behalf of the appellant brought to the notice of this Court that the Award amount had already been deposited. Thus, the appellant is permitted to withdraw the deposited amount with accrued interest by filing an appropriate application and the payments are to be made through RTGS.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn
To

The Additional Sub Judge (FAC),
Additional Sub Court-cum-
The Motor Accidents Claims Tribunal,
Tiruvannamalai.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 19803.
+1 CC to Mr.G.Suresh, Advocate sr 20353.

CMA No.819 of 2016

GP (CO)
SP (30/11/2020)



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