IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2020

DELIVERED ON : 23.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1381 of 2018 and
C.M.P.No.11037 of 2018

The United India Insurance Company Limited,
Divisional Office
No.73-C, M.T.H.Road
Ambattur, Chennai-53. .. Appellant/2nd Respondent

Vs.

1.Chandran

2.Mohan .. Respondents/Petitioner & 1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2017 made in MCOP.No.347 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri.

For Appellant : Mr.D.Bhaskaran

For Respondents : No appearance for R1
R2- Ex-parte before the Tribnal

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,40,000/- by the Tribunal towards compensation to the first respondent due to the injuries sustained by him in a motor vehicle accident.



2.The case in brief, is as follows:

On the fateful day, ie. on 07.02.2011 at about 02.30 p.m. at G.N.T. Road, Padiyanallur, opposite to Rajathi Weigh Bridge, the first respondent was riding the motorcycle bearing Reg.No.TN-20-AT-8149 from South to North direction. At that time, another motorcycle bearing Eng.No.J2MBTK50741; Chassis No.MD2DSJZZZTWK45426 and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the motorcycle, which the first respondent was riding. Due to the said impact, the first respondent sustained injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of

Rs.3,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,40,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the Insurance Company has come up with this appeal.

4.The learned counsel for the appellant Insurance Company, though not questioned the quantum of compensation awarded by the Tribunal, disputed the liability fixed on the Insurance Company to pay the compensation, on the ground that the Tribunal has failed to adjudicate the issue as regards the specific defence taken by the Insurance Company before the Tribunal that there was no insurance coverage for the vehicle in question on the date of accident. He submitted that the Tribunal has failed to consider the evidence of R.W.1-Official of the Insurance Company, who deposed before the Tribunal that there was no contract of insurance on the date of accident. In this regard, it is specifically submitted that the accident occurred on 07.02.2011 at 02.30 p.m., but the policy in question covered the risks commencing only from 08.02.2011 at 16.31 hours, for a period of one year.

5.When this appeal was taken up on 30.10.2019, there was no representation for the respondents and it was directed to be posted on 28.11.2019. After serving notice, the appeal was posted on 15.09.2020 printing the name of the first respondent. The second respondent was set ex-parte before the Tribunal. Even on that day, there was no representation for the first respondent / claimant. However, this Court is inclined to proceed with the matter on merits.

6.The only question that has to be decided in this appeal is as to whether the vehicle in question was having insurance cover on the date of accident. In the counter filed by the Insurance Company before the Tribunal, it has been specifically averred that since the insured has not intimated the involvement of the vehicle in the road accident that took place on 07.02.2011 at about 02.30 p.m., the Insurance Company denies the accident and puts the insured to strict proof of his allegations. It is also stated that in the Accident Register entry, the vehicle number, date of accident and RTA have not been mentioned. This Court has perused the Insurance Policy which is marked as Ex.P9. In the policy, it is seen that the policy commences from 16.31 hours on 08.02.2011 till the midnight on 07.02.2012. The Tribunal has simply observed in the judgment that the offending vehicle was owned by the second respondent herein and it has been proved that the same has been insured with the appellant Insurance Company at the time of accident, under Ex.P9-Insurance Policy and hence the contention put forth on the side of the Insurance Company that the offending vehicle was not insured with them, is not acceptable. The Tribunal has not analysed the Insurance Policy in proper perspective to check as to whether on the date of accident, there was coverage of risks. Even in the column 'Cover Note and Date', the date has been mentioned as 08.02.2011, which means the claimant has approached the Insurance Company for taking policy only on 08.02.2011, ie., after the accident which took place on 07.02.2011. In fact the date of issuance of receipt for having received the premium is 09.02.2011.

7.In view of the above, it is crystal clear that there was no insurance coverage for the vehicle in question at the relevant point of time. Therefore, the Insurance Company is not liable to pay any compensation to the first respondent / claimant.

8.In such view of the matter, the judgment and decree dated 12.09.2017 made in MCOP.No.347 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri, are set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed. No costs.

9.The Insurance Company is permitted to withdraw the amount, if any already deposited before the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

KM

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Ponneri.

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

C.M.A.No.1381 of 2018
and
C.M.P.No.11037 of 2018

SR(CO)
GMY(22/04/2021)