IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.178 of 2017

M/s. The ICICI LOMBARD GENERAL
INSURANCE COMPANY LIMITED,
Trichirappalli, rep.by its Branch Manager,
having his office at Door No.5,
III Floor Annamalai Nagar,
Karur By-pass Raod, Thillai Nagar,
United Arcad Trichirappalli & District.
.. Appellant/2nd Respondent

Vs.

1. Vijayakumar

2. S.Jegabar Nachiyar .. Respondents/Petitioner & 1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2010 made in MCOP.No.88 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Nagapattinam.

For Appellant : M/s.Sreevidhya

For Respondents : No appearance

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.68,000/- 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 22.08.2008 at about 02.30 p.m. the first respondent/claimant was a pillion rider travelling in the Hero Honda Splendor two-wheeler bearing Registration No. TN 51 L 6372. His brother Prabaharan was riding the two wheeler. When they were proceeding in Thonithurai, near

Akkaraipattai new bridge, the Tata Sumo vehicle bearing registration No. TN 51 C 4087 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner from the opposite direction and dashed against the motorcycle. Due to the said impact, the first respondent sustained grievous injuries. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.68,000/- with interest at the rate of 7.5% per annum from the date of petition. The said sum has been directed to be paid by the owner of the vehicle and the Insurance Company, jointly and severally. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.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. She 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.

4.Despite service of notice and the name of the respondents having been printed in the cause list, there is no representation on their behalf. However, due to paucity of time, this Court is inclined to proceed with the matter on merits.

5.Heard the learned counsel for the appellant insurance company and perused the materials available on record carefully and meticulously.

6.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

7.The only question that has to be decided in this appeal is as to whether the vehicle in question was having insurance coverage on the date of accident, or not. In the counter affidavit filed by the Insurance Company before the Tribunal, it has been specifically averred that the vehicle belonging to the second respondent was not insured with them and the policy was not in force at the time of accident. To substantiate the same, R.W.1-Official of the Insurance Company was examined and Ex.R1-Proposal for insurance, Ex.R2-View proposal status and Ex.R3 -Certificate cum Policy Schedule, were marked. According to the first respondent/claimant, Ex.R1 is the insurance policy, covering the risk of the offending vehicle from 00.00 hours on 21.08.2008 to 20.08.2009 midnight. Relying on the same, the Tribunal held that there is no dispute that the second respondent's vehicle was insured with the appellant Insurance Company at the time of accident and accordingly, directed them to pay the compensation to the first respondent/claimant. Such finding is under challenge by the appellant insurance company in this appeal, contending that at the time of accident, there was no insurance coverage for the vehicle in question, and hence they are not liable to pay any compensation.

8.It is seen from the documents produced on the side of the appellant insurance company before the Tribunal that Ex.R1 is only a quotation/ proposal dated 20.08.2008, as deposed by RW1; Ex.R2 is the view proposal status, as per which, the vehicle inspection was done on 26.08.2008, payment was received on 27.08.2008 and the same was confirmed on 30.08.2008; Ex.R3 is the certificate cum policy schedule, which was issued on 29.08.2008, according to which, the period of insurance was from 00.00 hours on 26.08.2008 to 25.08.2009 midnight. Thus, it is crystal clear from those materials that the risk of the offending vehicle covers only from 26.08.2008 onwards and hence, there was no contract existed between the owner of the vehicle and the insurance company on the date of accident i.e., on 22.08.2008. In the absence of any insurance policy, no liability can be mulcted on the appellant insurance company.

9.In such view of the matter, the finding of the Tribunal fixing liability on the appellant insurance company is liable to be set aside and is accordingly set aside. Except the same, the award of the Tribunal stands confirmed, in respect of other aspects.

10.In the result, the Civil Miscellaneous Appeal is allowed. No costs. It is represented by the appellant insurance company that as directed by this Court, the appellant insurance company has deposited the entire award amount along with proportionate interest and costs. Hence, the appellant insurance company is permitted to withdraw the amount lying in the deposit. It is needless to state that the first respondent/claimant can recover the compensation awarded by the Tribunal from the owner of the vehicle, alone.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Nagapattinam.

Copy To

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

BR(CO)
GMY(05/05/2021)