IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2122 of 2017
and
CMP.No.11243 of 2017

The Branch Manager,
M/s.TATA AIG General Insurance Company Limited,
G.S.N. Arcade, Krishnagiri Bye-Pass Road,
Hosur. ... Appellant/2nd Respondent

Vs.

1.D.P.Allabakash ..1st Respondent/Claimant

2.K.N.Narayana Reddy ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2017 made in M.C.O.P.No.743 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.Nirmaleswar

: No appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 11.01.2017 made in M.C.O.P.No.743 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The facts in brief, are as follows:

The 1st respondent filed a claim petition before the Tribunal, claiming a sum of Rs.1,50,000/- as compensation for the damage caused to his vehicle in the accident that took place on 28.01.2014. According to the 1st respondent, he purchased the Mahindra Light Goods Vehicle bearing Registration No. TN 24 U

6302 on 18.01.2014 from the 2nd respondent, which vehicle was insured with the appellant/Insurance Company. The 1st respondent applied name transfer before the Regional Transport Office, Hosur on 20.01.2014. The name change got effected in the records only on 28.01.2014. Unfortunately on the date of accident i.e., on 28.01.2014 at about 10.50 a.m., while the said Mahindra van was proceeding on the Nandimangalam to Jawalagiri road, in the extreme left side of the road, the TNSTC Town Bus Route No.39, bearing Registration No.TN 29 N 1948, came in a rash and negligent manner and hit against the van. Due to the said impact, the van was fully damaged. According to the 1st respondent, he purchased the said van for a valuable consideration of Rs.2,30,000/- and repaired the vehicle at the cost of Rs.1,50,000/-. Due to the damage to the vehicle, he incurred expenses to the tune of Rs.1,50,000/-. Therefore the 1st respondent filed the above claim petition claiming compensation against the appellant/Insurance Company.

3.The appellant/Insurance Company filed a counter statement before the Tribunal stating that the 1st respondent was not possessing the effective and valid driving license at the time of accident. The 1st respondent purchased the vehicle from one Narayana Reddy three months prior to the accident. As per the Registration Certificate, ownership was effected only on 21.01.2014 and not as stated by the first respondent. The Insurance Company has also disputed the date of accident and the contentions put forth on the side of the claimant in this connection, before the Tribunal. According to the appellant Insurance Company, on the date of accident, there was no contractual relationship between the first respondent and the Insurance Company.

4.The 2nd respondent / previous owner of the said van, remained ex parte before the Tribunal.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the 1st respondent is entitled to get a sum of Rs.1,50,000/- as compensation for the damage caused to his vehicle and directed the appellant/Insurance Company to pay the said sum.

6.Against the said award dated 11.01.2017 made in M.C.O.P.No.743 of 2014, granting compensation to the 1st respondent the appellant/Insurance Company has come out with the present appeal.

7.The learned counsel appearing for the appellant/Insurance Company has contended that the Tribunal has failed to appreciate that its jurisdiction is based on finding of fault on the owner and the statutory liability of the appellant is to indemnify the legal liability of the owner. The claim by owner/purchaser himself is therefore not within the scope of the Tribunal. The Tribunal erred in holding the appellant liable to the purchaser when there is no privity of contract by transfer of policy on the date of accident. It is further contended that the Tribunal failed to appreciate that the "grace period" of 14 days cannot create a contractual relationship between the purchaser and the appellant and in the absence of transfer of insurance prior to accident, the appellant could not be held liable for any loss suffered by the 1st respondent. The Tribunal has erred in granting a sum of Rs.1,50,000/- as compensation whereas the amount payable should have been decided based on policy terms and conditions subject to proof of actual payment and application of depreciation, excess etc. Hence, the impugned judgment has to be set aside according to the learned counsel for the appellant Insurance Company.

8.Per contra, the learned counsel appearing for the 1st respondent has contended that the Tribunal after considering all the materials available on record has awarded the compensation and the same is in accordance with law.

9.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

10.The main contention of the learned counsel appearing for the appellant/Insurance Company is that the claim petition for damage by the owner is not maintainable before the Tribunal. Only by the third parties to the contract of Insurance are entitled to file claim petition before the Motor Accident Claims Tribunal for the damage caused to the property or death or bodily injury as per Section 165 (1) of the Motor Vehicles Act. The claim for own damage by the owner of the vehicle shall be filed only by way of civil suit. Section 175 of the Motor Vehicles Act specifically bars the Civil Courts to entertain any claim for compensation which may be adjudicated upon by the claims Tribunal for that area. Hence, only the Motor Accident Claims Tribunal has the jurisdiction and power to adjudicate upon all the claims arisen out of any road traffic accident. The present claim petition was filed by the 1st respondent as owner of the vehicle relating to compensation for the damage caused to his vehicle in the road traffic accident which occurred on 28.01.2014. The manner of accident as well as damage caused to the vehicle in the accident are not denied by the appellant/Insurance Company. Therefore, the claim petition filed by the 1st respondent in relation to the damage to his own vehicle in the road traffic accident is maintainable before the Tribunal. Furthermore, the learned counsel appearing for the appellant/Insurance Company contended that there is no contractual relationship between the 1st respondent and the appellant/Insurance Company on the date of accident. It is not disputed by the appellant/Insurance Company that the vehicle of the 1st respondent is a Light Goods Vehicle and it was originally purchased by the 2nd respondent and he had entered into a contract for Insurance Company in respect of the said vehicle with the appellant/Insurance Company. RW1, who is the Assistant Manager of the appellant/Insurance Company, has admitted the above said facts and Ex.R1/copy of Insurance Policy entered into between the 2nd respondent and the appellant/Insurance Company was marked. Admittedly, the 1st respondent has purchased the vehicle from the 2nd respondent on 18.01.2014 and he had applied for name transfer before the Regional Transport Officer, Hosur on 20.01.2014. The name transfer was effected and received by the 1st respondent only on 28.01.2014 on which date of accident has occurred. The main objection of the appellant/Insurance Company is that on the date of accident there was no contract for insurance for the vehicle between the appellant/Insurance Company and the 1st respondent. The 1st respondent claims that subsequent purchaser of the vehicle may intimate the name transfer to the Insurance Company within 14 days from the date of name transfer. RW1 also admitted the grace period of 14 days during his cross examination, until the name transfer is effected in the Insurance Policy, it shall be considered as deemed transfer of policy with the rights and liabilities of the contracting parties effective from the date of transfer, if the previous owner had handed over the original RC book and Insurance Policy to the purchaser. Hence, the 1st respondent had a grace period from 20.01.2014 to 04.02.2014 to formally intimate the appellant/Insurance Company regarding his purchase of the vehicle under contract. Hence, the defence of the appellant/Insurance Company that there is no contractual relationship between themselves and the 1st respondent is not sustainable and the 1st respondent is entitled to compensation from the appellant/Insurance Company for the damage caused to his vehicle.

11.As far as compensation of Rs.1,50,000/- claimed by the 1st respondent is concerned, the 1st respondent as PW1 deposed that he informed the appellant/Insurance Company orally on 28.01.2014 itself about the accident and he submitted all the particulars such as RC book, permit, driving license etc., on 29.01.2014. As per the admission of RW1 the company surveyor had assessed the value of the damage at Rs.80,000/-, but the 1st respondent claims the cost for damage as Rs.1,20,000/- and labour charges as Rs.32,000/-. In order to prove the same the 1st respondent produced Ex.P2/6 quotations, Ex.P13/receipt, Ex.P14/cash bill dated 29.01.2014 and Ex.P16/photos. Though the 1st respondent contended that due to the damage caused to the vehicle he suffered revenue loss for 36 days, there is no proof in this regard and hence, he is not entitled to get any amount towards revenue loss. However, as per Ex.P2 bills and Ex.P14 crane rent bill, the 1st respondent is entitled to get a sum of Rs.2,27,810/-. Since the first respondent has restricted his claim to Rs.1,50,000/-, the Tribunal held that the 1st respondent is entitled to only Rs.1,50,000/- as compensation for the damage caused to his vehicle, which does not warrant any interference by this Court, as the Tribunal has dealt with the matter in proper perspective and has awarded the compensation to the first respondent.

12.In the result, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, as awarded by the Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent is permitted to withdraw the same on making proper application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mtl
To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

C.M.A.No.2122 of 2017

cp co
A.SK(31.03.2021)