IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2638 of 2017
And
C.M.P.No.14487 of 2017

The National Insurance Company Ltd.,
Connaught Place,
BMC House,
Flat No.101-106,
New Delhi. .. Appellant/Respondent

vs.

A.Arumugam .. Respondent/Petitioner

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.11.2016 passed in M.C.O.P.No.395 of 2015 on the file of the learned III Additional District and Sessions Judge, III Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Gobichettipalayam.

For Appellant : Mr.J.Chandran

For Respondent : Mr.S.P.Yuva Raj

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 22.11.2016 passed by the learned III Additional District and Sessions Judge, III Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Gobichettipalayam in M.C.O.P.No.395 of 2015.

2. The accident occurred on 05.03.2015 at about 02.30 P.M., at Palladam to Pollachi Road, near the Tamil Nadu Timber Depot. The Palladam Police Station registered a case in Crime No.310 of 2015 under Sections 279 and 337 of IPC. The claimant sustained injuries and filed claim petition, seeking compensation of Rs.5 lakhs. This apart, the claimant at the time of driving the vehicle has not possessed a valid license and he

was prosecuted for the offences and acquitted.

3. The appellant-Insurance Company filed a counter statement stating that at the time of accident, the petitioner was insured/owner of the said vehicle. Thus, as per the Insurance Policy and Motor Vehicles Act, the Insurance Company is not liable to pay any compensation to the petitioner/claimant and the petitioner/claimant has no locus standi and any legal right to claim any compensation from the appellant/Insurance Company under his capacity as owner/insured of the vehicle. Despite the specific defence in the counter, the Tribunal proceeded on the basis that there is a coverage of insurance policy and accordingly awarded a compensation of Rs.1,24,520/-.

4. The Tribunal though recorded the counter statement of the appellant/Insurance Company, in the judgment, the said contentions were not adjudicated nor any finding was arrived. When the Insurance Company raised the maintainability of the claim petition, the Tribunal is expected to decide the said maintainability at the first instance. In all such cases, where there is no coverage or the liability itself is questioned, then the Tribunal is bound to consider the issue as the preliminary issue for the purpose of proceeding with the claim petition for the grant of compensation.

5. In the present case, the counter filed by the appellant/ Insurance Company, in clear terms, states that as per the Insurance Policy and the Motor Vehicles Act, the appellant/Insurance Company is not liable to pay compensation to the petitioner/claimant, as at the time of accident, the claimant was the insured/owner of the said vehicle.

6. This being the factum and the said defence of the appellant/Insurance Company has not been repudiated by the claimant, then there is no reason for the Tribunal to proceed with the quantum of compensation. Thus, the Tribunal has committed an error in adjudicating the issue regarding the Award of compensation, even without considering the fact that the claim petition itself is unsustainable. The fact that the owner of the vehicle or any other person has been not impleaded in the claim petition and in the claim petition itself the claimant himself is the owner and insured. Thus, there is no coverage in the policy and therefore, the judgment of the Tribunal is perverse and not in consonance with the provisions of the Motor Vehicles Act as well as the policy issued by the appellant/National Insurance Company.

7. In this view of the matter, this Court is of an opinion that no further adjudication regarding the merits of quantum is required and thus, the judgment and decree dated 22.11.2016 passed by the learned III Additional District and Sessions Judge, III Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Gobichettipalayam in M.C.O.P.No.395 of 2015 is quashed and consequently, C.M.A.No.2638 of 2017 stands allowed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

8. The Award amount, if any, deposited by the appellant/Insurance Company, in the credit of MCOP No.395 of 2015 on the file of the III Additional District and Sessions Court-cum-Motor Accidents Claims Tribunal, Gobichettipalayam in M.C.O.P.No.395 of 2015 is permitted to be withdrawn by the appellant/Insurance Company, by filing an appropriate application.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Svn
To

The III Additional District and Sessions Judge,
III Additional District and Sessions Court-cum-
Motor Accidents Claims Tribunal,
Gobichettipalayam.

Copy to

The Section Officer
VR Section
HighCourt Madras

+1 cc to Mr.SP.Yuvaraj Advocate sr20309
+1 cc to Mr.J.Chandran Advocate sr20187

ln(co)
aa02/12/2020