IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2803 and 2804 of 2017
and
C.M.P.Nos.16009 & 16010 of 2017 and
24873 & 24875 of 2019

M/s.HDFC-ERGO General Insurance
Company Ltd.
Divisional Manager
IV floor, Rajanarayanan Towers
70, Race course road
Coimbatore-641 018. ... Appellant/3rd Respondent in both CMAs.

Vs

1.S.Srinivasan ... 1st Respondent/Respondent in CMA.No.2803 of 2017

1.T.Senthilkumar ... 1st Respondent /Respondent in CMA.No.2804 of 2017

2.D.Kirubakaran

3.I.Maria Joseph ... Respondents 2 and 3/ Respondents 1 &2 in both CMAs.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.11.2016 made in M.C.O.P.Nos.1262 and 1263 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

In both CMAs.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.E.D.Sethupathi

C O M M O N   J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the common award dated 23.11.2016 made in M.C.O.P.Nos.1262 and 1263 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is 3rd respondent in M.C.O.P.Nos.1262 and 1263 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore. The claimants filed the said claim petitions claiming a sum of Rs.5,00,000/- and Rs.2,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 04.12.2011.

4.According to the claimants, on the date of accident, i.e., on 04.12.2011 at about 14.30 hours, while the claimant in C.M.A.No.2803 of 2017 was riding in his motorcycle along with the claimant in C.M.A.No.2804 of 2017 as pillion rider, from West to East direction near Ellaiamman temple, Vinayagapuram, Vilankurichi road, Coimbatore, the car belonging to the 2nd respondent, which came in the opposite direction, driven by the 1st respondent in a rash and negligent manner, dashed against the claimants and caused the accident. Due to the accident, the claimants sustained fractures and multiple injuries. Hence, they filed the above claim petitions seeking compensation.

5.The respondents 1 and 2, driver and owner of the car respectively, remained exparte before the Tribunal.

6.The 3rd respondent/Insurance Company filed counter statement denying the averments made in the claim petitions and contended that the contents of the insurance policy mentioned in the claim petitions are bogus and not genuine. The said policy was not issued to the offending car. Therefore, the 3rd respondent/Insurance Company is not liable to pay any compensation. In any event, the compensation claimed by the claimants are excessive.

7.Before the Tribunal, both the claimants examined themselves as P.W.1 & P.W.2, one Dr.K.Gajendran was examined as P.W.3, Mr.T.Velumani, Motor Vehicle Inspector, was examined as P.W.4 and marked 11 documents as Exs.P1 to P11. On the side of the 3rd respondent/Insurance Company, one G.Vijayalakshmi, was examined as R.W.1 and marked four documents as Exs.R1 to R4.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver of the car belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company to pay a sum of Rs.1,74,000/- and Rs.23,000/- as compensation to the claimants respectively.

9.Against the common award dated 23.11.2016 made in M.C.O.P.Nos.1262 and 1263 of 2012, the present appeals have been filed by the 3rd respondent/Insurance Company.

10.The learned counsel appearing for the 3rd respondent/Insurance Company contended that the claimants did not even disclose the details of the alleged insurance policy and the period of coverage in the claim petitions to justify in filing the claim petitions against the 3rd respondent/Insurance Company. The Tribunal failed to see that the claimants did not mark the alleged copy of insurance policy. The accident has occurred on 04.12.2011. F.I.R. was lodged only on 11.12.2011. The Tribunal failed to appreciate the delay in filing the F.I.R. The Motor Vehicle Inspector, who was examined as P.W.4, in his evidence has categorically deposed that he is not an authority to ascertain whether the policy shown to him at the time of inspection of the offending vehicle belonging to the 2nd respondent is genuine one or not. The car belonging to the 2nd respondent was not insured with the 3rd respondent/Insurance Company and R.W.1 in her evidence has categorically deposed to that effect. The Tribunal failed to appreciate Ex.R1/letter addressed to the D.G.P., Ex.R4/complaint lodged with the District Crime Branch, Coimbatore and Exs.R2 & R3 summons issued to R.W.1. These documents show that the insurance policy mentioned in the Motor Vehicle Inspector's report under Ex.P5 is forged and fabricated document as there is no record in the 3rd respondent/Insurance Company's office for having issued the policy to the offending car belonging to the 2nd respondent. The reason given by the Tribunal for not accepting the evidence of R.W.1 with regard to bogus and fabricated policy is erroneous. The Tribunal failed to draw adverse inference that the policy of insurance is forged and fabricated document, considering the fact that the 2nd respondent failed to contest and prove the coverage. The Tribunal fixed the liability on the 3rd respondent/Insurance Company without any basis and the same is totally unjustified and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the claimants contended that at the time of inspection of offending vehicle belonging to the 2nd respondent, the policy was produced before the Motor Vehicle Inspector, who was examined as P.W.4 and policy number, period of coverage and name of the insurance company are mentioned in Ex.P5. By examining the Motor Vehicle Inspector and marking Motor Vehicle Inspector's Report, the claimants have proved that the offending vehicle had policy issued by the 3rd respondent/Insurance Company at the time of accident. The claimants have also mentioned the details of the policy number, period of coverage and name of the 3rd respondent/Insurance Company in column No.3 in the claim petitions. The Tribunal considering the above materials rightly held that the offending vehicle belonging to the 2nd respondent was insured with the 3rd respondent/Insurance Company, fastened liability on them and prayed for dismissal of the appeals.

12.Heard the learned counsel appearing for the 3rd respondent/ Insurance Company as well as the claimants and perused all the materials available on record.

13.From the materials available on record, it is seen that in coloumn No.3 of the claim petitions, the claimants have mentioned the policy number as '212642068724960000, valid from 22.12.2010 to 21.12.2011'. The contention of the 3rd respondent/Insurance Company is that the said policy number was not issued by the 3rd respondent/Insurance Company to the offending vehicle belonging to the 2nd respondent. In the counter statement as well as in the grounds of appeals, the 3rd respondent/Insurance Company has stated that no policy bearing No.212642068724960000 mentioned by the claimants in the claim petitions and Ex.P5/Motor Vehicle Inspector's Report by P.W.4 was issued at all or issued to some other vehicle. From the award of the Tribunal, it is seen that R.W.1 has not stated that she has not seen the policy and has not stated that as to how the policy is bogus and fabricated one. No doubt, the 3rd respondent/Insurance Company has written letter to the D.G.P. and lodged complaint to the District Crime Branch, Coimbatore, which are marked as Exs.R1 and R4. It is stated in the grounds of appeals that R.W.1 summoned with regard to such complaint and the summons were marked as Exs.R2 and R3. There is nothing on record to show that the 3rd respondent/Insurance Company, who claims that the policy issued by them for the offending car was examined by the District Crime Branch, Coimbatore. For the above reason, I hold that the 3rd respondent/Insurance Company has failed to prove that the policy mentioned in the claim petitions as well as in Ex.P5/Motor Vehicle Inspector's Report is bogus one and the 3rd respondent/Insurance Company is not liable to pay compensation. The reason given by the Tribunal for rejecting the evidence of R.W.1 and holding that the 3rd respondent/Insurance Company failed to prove that the policy was forged and fabricated one is valid. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.In the result, both the Civil Miscellaneous Appeals are dismissed and the sum of Rs.1,74,000/- and Rs.23,000/- awarded by the Tribunal as compensation to the claimants respectively along with interest and costs is confirmed. The 3rd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, 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, the claimants/1st respondents in both CMAs. are permitted to withdraw their respective award amount awarded by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj
To
1.The Special Subordinate Judge
The Motor Accident Claims Tribunal
Coimbatore.

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

+1 cc to M/s.J.Micheal Visuvasam, Advocate Sr.No. 4894
+1 cc to M/s.E.D.Sethupathi, Advocate Sr.No. 4868

C.M.A.Nos.2803 and 2804 of 2017

BS(CO)
RMP(07/01/2021)