BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A.(MD) No.395 of 2008
and
M.P.(MD) No.1 of 2008

The Branch Manager
The New India Assurance Company Ltd.,
81/2A, First Floor
Hyderabad ... Appellant/2nd Respondent

-vs-

1.A.Ramasamy ...1st Respondent/Petitioner

2.M/s.Popular Ventures & Capital Pvt. Ltd.
Ashok Nagar, Hyderabad ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 20.12.2007 and made in M.C.O.P.No.348 of 2002, on the file of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Dindigul.

For Appellant : Mr.K.Murugesan

For Respondents : No appearance for R1
R2 - Dismissed vide court order dated 10.04.2019

JUDGMENT

Aggrieved over the Award, dated 20.12.2007, passed by the Motor Accident Claims Tribunal / I Additional Sub Court, Dindigul, in M.C.O.P.No.348 of 2002, the Insurance Company has preferred this civil miscellaneous appeal.

2. The first respondent / claimant filed the claim petition seeking compensation of Rs.1,25,000/- for the injuries sustained by him in the motor vehicle accident that took place on 14.04.1995. It is the case of the claimant that on 14.04.1995 at 12.00 Noon, he was travelling as a pillion rider in TVS50 Motorcycle bearing registration No.TCY 4543 and it was driven by one Thangavel. When the two wheeler was proceeding near Gobinathaswamy Temple on Dindigul - Oddanchatram Main Road, a Maruthi Van bearing registration No.AP C755, owned by the second respondent and insured with the appellant - Insurance Company came in a rash and negligent manner and rammed the two wheeler. In the accident, the claimant sustained injuries and he was immediately carried to the Government

Hospital, Dindigul. Thereafter, he took treatment for three months in a private hospital.

3. The appellant – Insurance Company opposed the claim petition mainly contending that the offending vehicle had no insurance coverage at the time of the accident and hence, the Insurance Company does not hold the responsibility to pay the compensation amount.

4. During trial, in order to prove the defence taken by the Insurance Company, one Natesh Babu was examined as R.W.1 and the Authorization Letter, dated 06.11.2003, was marked as Ex.R1. The claimant examined himself as P.W.1 and marked the copy of the first information report as Ex.P1 and the wound certificate as Ex.P2. That apart, no document was produced to prove that the vehicle involved in the accident had insurance coverage at the time of the accident. Upon consideration of the evidence adduced by the parties, the Tribunal awarded a sum of Rs.20,000/- along with interest at the rate of 7.5% per annum making the second respondent / owner and the appellant / insurer of the offending vehicle liable to pay the amount.

5. The Tribunal to reach the above conclusion has held and observed that R.W.1 is an Assistant working in the New India Assurance Company Limited, Dindigul Branch, whereas the offending vehicle was insured with the Hyderabad Branch. So, to prove that there was no insurance coverage at the time of the accident, no material was produced by the appellant – Insurance Company.

6. It is contended by Mr.K.Murugesan, learned counsel appearing for the appellant – Insurance Company that when a specific plea had been taken in the counter that the vehicle involved in the accident had no insurance coverage, the burden of proof shifted to the claimant to prove the same. According to the learned counsel, the burden of proof has not been discharged by the claimant, instead, the Tribunal has wrongly placed the onus on the appellant – Insurance Company. It is also stated that the appellant did not remain *ex parte* and they have examined one witness to show that there was no insurance coverage for the offending vehicle at the time of the accident.

7. Though the first respondent / claimant has been served with notice and his name has been printed in the cause list, none appeared for him.

8. Heard Mr.K.Murugesan, learned counsel appearing for the appellant – Insurance Company and carefully perused the materials available on record.

9. In the matter on hand, it is the case of the claimant that he sustained fracture in the motor vehicle accident that took place on 14.04.1995. He took treatment in the Government Hospital, Dindigul for about about 27 days and after discharge from the hospital, he was taking treatment in a private hospital for another period of three months. A perusal of the counter would show that in Paragraph 5, the appellant - Insurance Company has specifically stated that the vehicle involved in the accident had no insurance coverage at the time of the accident. The appellant - Insurance Company has also examined the employee from the Insurance Company. When such a specific plea has been taken in the counter, it is for the claimant to prove that the owner of the vehicle had taken policy covering liability. But, the owner of the vehicle remained *ex parte* before the Tribunal. If the owner of the vehicle had taken a policy on the date of the accident, the appellant - Insurance Company has to issue notice to him seeking the particulars about the driving licence of the driver of the vehicle. Since the vehicle was not insured, as per the stand of the appellant - Insurance Company, the finding of the Tribunal that the appellant did not issue any notice to the owner of the vehicle is unwarranted. Admittedly, the first respondent / claimant has not produced any material to establish that the vehicle involved in the accident had insurance coverage on the date of the accident. Hence, the finding of the Tribunal making the appellant - Insurance Company liable to pay the compensation is set aside. However, the quantum of compensation awarded by the Tribunal is confirmed.

10. It is represented by the learned counsel appearing for the appellant - Insurance Company that as per the interim orders of this Court, the entire award amount has been deposited to the credit of the claim petition. Since the appellant - Insurance Company has been exonerated from the liability to satisfy the award amount, the appellant - Insurance Company is permitted to withdraw the amount lying in the credit of the claim petition and it is open to the first respondent / claimant to recover the award amount from the owner of the vehicle / second respondent herein.

11. Accordingly, the civil miscellaneous appeal is allowed and the Judgment and Award, dated 20.12.2007, passed by the Motor Accident Claims Tribunal / I Additional Sub Court, Dindigul, in M.C.O.P.No.348 of 2002, are modified to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Krk

To:

1. The I Additional Subordinate Judge,
   Motor Accident Claims Tribunal,
   Dindigul

2. The Record Keeper,(2COPIES)
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

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