



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.267 of 2009

and

M.P(MD)No.1 of 2009

WEB COPY

The Branch Manager,
The Oriental Insurance Co., Ltd.,
Loyola Building, I Floor,
Salai Road, Dindigul. : Appellant/2nd Respondent

Vs.

1.Amalraj : 1st Respondent/Petitioner
2.Simon
(2nd Respondent remained ex-parte
before the lower Court) :2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the Award made in M.C.O.P.No.87 of 2005 dated 31.10.2008, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.M.Thirunavukkarasu

JUDGMENT

The Insurance Company has preferred this appeal aggrieved over the direction issued by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Dindigul in M.C.O.P.No.87 of 2005, dated 31.10.2008. Wherein, the Tribunal has directed the appellant/Insurance Company to pay the award of Rs.44,900/- at the first instance and intun to recover the same from the owner of the vehicle.

2. Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company as well as Mr.M.Thirunavukkarasu, learned counsel appearing for the first respondent and perused the materials available on record.

3. In the matter on hand, the first respondent herein filed the claim petition claiming compensation of Rs.1,00,000/- and it is the case of the claimant that on 05.07.2004 at about 6.15 p.m., he travelled in an auto bearing Registration No.TN-57-E-7188 along with his goods from Gandhigramam to Dindigul on National Highways and when the vehicle was reaching near A.Vellodu Branch Road, the vehicle capsized and thereby, the claimant sustained multiple



injuries.

4.The claim petition was opposed by the appellant/Insurance Company contending that the first respondent insured his vehicle only for theft and fire and not for road risk and hence, the Insurance Company is not liable to pay any compensation to the claimant. That apart, the other averments contained in the claim petition were also denied.

5. During trial, the appellant produced the policy and marked as Ex.R1 through R.W.1 Muralidharan. The policy enclosed in the typed set of papers at Page-9 would vividly show that the owner of the vehicle had taken a policy only to cover the fire and theft of the offending vehicle. Though this plea taken by the appellant was accepted by the Tribunal, but taking note of the fact that the claimant was a third party, the Tribunal applied the principle of 'Pay and Recovery', when there is no coverage of the vehicle, the appellant is right in contending that they cannot be made liable to pay the compensation. So, while confirming the quantum of compensation, direction issued by the Tribunal to the appellant/Insurance Company to pay the award amount at the first instance to the claimant and then to recover the same from the owner of the vehicle, is set aside. It is open to the claimant to recover the amount awarded by the Tribunal from the owner of the vehicle.

6. Accordingly, this Civil Miscellaneous Appeal is allowed.

7. It is represented by Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company that 50% of the award amount has already been deposited to the credit of M.C.O.P.No.87 of 2005. If it is so, the Tribunal is directed to refund the said amount to the appellant/Insurance Company, if the same is not withdrawn by the first respondent/claimant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// 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 order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Motor Accidents Claims Tribunal-cum-
Chief Judicial Magistrate,
Dindigul.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-24713[F] dated 09/12/2020)

C.M.A(MD)No.267 of 2009
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