BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.520 of 2009
and
M.P(MD)No.1 of 2009

The Oriental Insurance Co., Ltd.,
through its Branch Manager,
S.N.High Road,
Tirunelveli. : Appellant/2nd Respondent

Vs.

1.Sheela Packiaselvi : 1st Respondent/Petitioner
2.Kalimuthu
(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.426 of 2007, dated 06.01.2009, on the file of the Motor Accident Claims Tribunal-cum-I Additional Sub Judge, Tirunelveli.

For Appellant : Mr.K.Bhaskaran
For R1 : No appearance
For R2 : Notice Dispensed with

JUDGMENT

Aggrieved over the award passed by the Motor Accidents Claims Tribunal-cum-I Additional Sub Judge, Tirunelveli in M.C.O.P.No.426 of 2007, dated 06.01.2009, the present appeal has been filed by the appellant Insurance Company challenging their liability to pay compensation.

2. The claimant/first respondent herein, namely, Sheela Packiaselvi filed a claim petition claiming compensation of Rs.2,00,000/-. According to her, on 12.02.2007 at 3.45 p.m., she was walking on Tirunelveli to Sattur main road near Puthukulam bus stand, at the time, the motorcycle bearing Registration No.TN-72-L-0477 owned by the first respondent in the claim petition and insured with the appellant Insurance Company was driven by its driver in a rash and negligent manner and hit against the

claimant. In the impact, she sustained grievous injuries on her right leg and multiple injuries all over the body. Immediately, she was taken to Tirunelveli Medical College Hospital, Palayamkottai and took treatment from 12.02.2007 to 22.02.2007.

3. According to her, the accident had taken place due to the negligence of the driver of the motorcycle and hence, the insurer and insured are jointly and severally liable to pay compensation.

4. The appellant in paragraph-5 of the counter statement has categorically stated that the motorcycle bearing Registration No.TN-72-L-0477 was insured with the insurance company from 28.11.2005 to 27.11.2006 under Policy No.414400/31/2006/6518 and the same was renewed only from 15.02.2007 to 14.02.2008 and on the date of accident i.e., on 12.02.2007 the vehicle was not covered with the Insurance Policy. The Tribunal in paragraph-7 of the judgment while accepting the case of the appellant that there was no policy coverage for the vehicle on the date of the accident by observing that even though, there was no policy coverage for the vehicle, however, considering the fact that the claimant would find some difficulties to recover the award from the owner of the vehicle, directed the appellant to pay an award of compensation of Rs.74,000/-.

5. Mr.K.Bhaskaran, learned counsel appearing for the appellant would argue that this appeal has been preferred only challenging the liability and they are not disputing the quantum awarded by the Tribunal. It is also contended that having found that there was no policy coverage for the offending vehicle, at that relevant time, it is not appropriate to direct the appellant to pay the award amount.

6. I find force in the submission of the learned counsel appearing for the appellant. The policies marked as Ex.R1 & Ex.R2 would reveal that on the date of accident, there was no policy coverage for the vehicle in question. Merely because, the claimant will to face some difficulties in recovering the amount from the owner of the vehicle, the Tribunal cannot fix the liability on the Insurance Company to pay the award amount. When there was no contract between the insurer and insured, this Court is not able to understand, how such a direction could be issued.

7. Hence, I am of the opinion that the appellant Insurance Company is entitled to succeed in the appeal. Insofar as the quantum is concerned, the award of the Tribunal is confirmed and only with regard to liability of the Insurance Company alone is set aside. It is open to the claimant to recover the amount awarded by the Tribunal from the owner of the vehicle.

8. Accordingly, this Civil Miscellaneous Appeal is allowed.

9. If any amount is deposited by the Insurance Company before the Tribunal, the same shall be refunded 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 (CS-I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

AM

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 I Additional Sub Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Section Officer-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.K.Bhaskaran , Advocate SR.No.25609

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