BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.912 of 2009

and

M.P.(MD) No.1 of 2009

The New India Assurance Company Ltd.,
Office at No.913-C
Catholic Center Main Road
Tuticorin
Through its Branch Manager ... Appellant/Respondent

-vs-

1.Karuthapandi ...Respondent No.1/Petitioner

2.Irulappan ... Respondent No.2/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree dated 22.04.2009 and made in M.C.O.P.No.643 of 2005, on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Tirunelveli.

For Appellant : Mr.K.Murugesan

For Respondents : Mr.T.Selvakumaran for R1
R2 - Dismissed vide Court order dated
(Now) 10/04/2019

J U D G M E N T

This civil miscellaneous appeal has been filed assailing the Judgment and Award dated 22.04.2009, passed in M.C.O.P.No.643 of 2005, by the Motor Accident Claims Tribunal / I Additional Sub Court, Tirunelveli.

2. The first respondent filed the claim petition seeking compensation of Rs.5,00,000/-. According to him, on 30.06.2005 he was travelling in a load Auto bearing registration No.TN69 Y0237 owned by the second respondent and insured with the appellant - Insurance Company from Melapalayam to Melacheval. When the Auto proceeding near Pirancheri Vilakku, the driver lost control of the vehicle due to high speed and negligent driving and caused the accident. In the said accident, the claimant was thrown out and sustained fracture and also injuries. It is the further case of the claimant that he travelled in the Auto as a loadman and hence, the owner and insurer of the said Auto are liable to pay compensation.

3. The appellant - Insurance Company repudiated the claim petition contending that the claimant was a gratuitous passenger in a goods vehicle and hence, no liability can be fixed on the Insurer. In the counter, it is specifically stated that the fitness certificate for the offending vehicle expired on 29.09.2004 and when the accident had taken place on 30.06.2005, the vehicle did not have the fitness certificate.

4. Before the Tribunal, both the parties adduced oral and documentary evidence. The Tribunal accepting the evidence adduced by P.W.1 / claimant and relying upon the documents of Ex.P1 - Copy of First Information Report, Ex.P2 - Copy of Charge Sheet and Ex.P4 - Copy of Observation Mahazar held that the driver of the Auto was responsible for the accident. While dealing with the contention of the appellant - Insurance Company that the vehicle was not having fitness certificate at the relevant time, it was held that they did not prove their defence.

5. Mr.K.Murugesan, learned counsel appearing for the appellant - Insurance Company, would argue that through R.Ws.1 and 2, the appellant - Insurance Company has proved that the offending vehicle was not having fitness certificate on the date of the accident, but the Tribunal has erroneously made the appellant - Insurance Company to pay the compensation and it is further stated that the appellant is not questioning the quantum of compensation awarded by the Tribunal.

6. Per contra, Mr.T.Selvakumaran, learned counsel appearing for the first respondent / claimant, made submissions in support of the findings of the Tribunal.

7. Heard the rival submissions and perused the materials available on record.

8. In the instant case, Ex.R1 - Insurance Policy shows that on the date of the accident, the offending vehicle was insured with the appellant - Insurance Company. There is no dispute in this regard. However, according to the appellant - Insurance Company, fitness certificate issued to the offending vehicle got expired on 29.09.2004 itself and it was not subsequently renewed. The employee of the appellant - Insurance Company, who gave evidence as R.W.1, admitted that the offending vehicle was insured with the appellant - Insurance Company and it does not have the fitness certificate on the date of the accident. R.W.2 - Junior Assistant of the Regional Transport Office, Kovilpatti, also stated that the fitness certificate for the offending vehicle was issued upto 29.09.2004 and it was not renewed subsequently. He also stated that if the fitness certificate was renewed after 29.09.2004, the same would have been annexed with Ex.R2 - Fitness Certificate and necessary particulars would be entered. But, the Tribunal has observed that Ex.P2 - copy of Fitness Certificate is not a complete document and hence, the plea of the appellant - Insurance Company cannot be accepted.

9. It is relevant to note that though the second respondent / owner of the offending vehicle received summons in the claim petition, however, he did not choose to contest the case. Therefore, the appellant - Insurance Company has taken all steps to substantiate their case that there was no fitness certificate for the offending vehicle on the date of the accident. But, the Tribunal, for the flimsy reasons, rejected the defence taken by the appellant - Insurance Company and held that the appellant - Insurance Company is liable to pay the compensation. It is also relevant to note that the claimant approached the Tribunal that he was a loadman and hence, he is entitled for compensation from the insured and insurer of the offending vehicle.

10. It is well settled that if the vehicle was not having fitness certificate, it would be treated as violation of policy conditions. Since the appellant - Insurance Company has proved the violation of policy conditions, they are directed to pay the award amount to the claimant at the first instance and thereafter, recover the same from the owner of the vehicle. It appears that the award amount is fair and reasonable.

11. It is seen from the records that the second respondent / owner of the offending vehicle remained *ex parte* before the Tribunal and hence, notice in this appeal is dispensed with as per Order XLI Rule 14(2) of the Code of Civil Procedure.

12. In the light of the above facts, while confirming the quantum, this Court directs the appellant - Insurance Company to pay the entire award amount with accrued interest and costs to the first respondent - claimant at the first instance and then recover the same from the second respondent / owner of the vehicle. Accordingly, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent - claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and cost.

13. Accordingly, the civil miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS I)

// True Copy //

/ /2021
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.

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To:
1.The Motor Accident Claims Tribunal,
The I Additional Sub Judge,
Tirunelveli.

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

+1 cc to Mr.T.SELVAKUMARAN ,Advocate, SR No.26521

C.M.A.(MD) No.912 of 2009
and
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