IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.1958 OF 2007

A.Munusamy

... Appellant/Petitioner

..Vs..

1. K.P.Narasimba Rao,

2. M/s.United India Insurance Company Ltd.,
   Rep.by its Manager, South India
   Co-operative Building
   38, Anna Salai
   Chennai 600 002.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.660 of 2001 dated 16.03.2004 on the file of the learned Additional District Judge Fast Track Court No.V, Chengalpattu, Thiruvallur (Motor Accidents Claim Tribunal) Thiruvallur, initially on the file of the learned Subordinate Judge, Thiruvallur.

For Appellant : Mr.A.R.Suresh

For Respondents : Mr.D.Baskaran for R2
R1- Notice unserved

JUDGMENT

(The matter is heard through Video Conferencing)

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the judgment and decree dated 16.03.2004, made in MCOP.No.660 of 2001 on the file of the Subordinate Judge, Thiruvallur.

2. The appellant, who is the claimant before the Tribunal, filed the claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 10.11.2003. The first respondent is the owner of the vehicle involved in the accident and the second respondent is the Insurance Company, in which the vehicle got insured.

3. According to the appellant / claimant that on 10.11.2003 at about 5.00 p.m., while he was proceeding in a Cycle on the extreme left side of the Road near Koramangalam Koot Road, a Lorry bearing Registration No. ADG 1323 came in a rash and negligent manner and dashed against the claimant. As a result of which, the claimant sustained head injuries and he was immediately admitted in the Government Hospital, Tiruttani for Treatment. The claimant was doing agricultural work and due to that accident, the appellant/claimant is permanently disabled to do his normal work. Hence, the appellant/claimant made a claim for a sum of Rs.1,00,000/- as compensation.

4. The second respondent/Insurance Company filed a counter before the Tribunal and denied the subsistence of Insurance Policy and Vehicular Records, viz., Driving License, Permit, FC and RC. The Insurance Company has also not admitted the age, occupation and income of the victim. Since the appellant/claimant has not produced any valid Insurance Policy of the vehicle that caused the accident, they prayed to dismiss the claim petition with cost.

5. Before the Tribunal, the the appellant/claimant examined himself as PW1 and Dr.J.R.R.Thiagarjan was examined as PW2 and 4 documents were marked as Exs.P1 to P4.

6. The Tribunal after considering the pleadings, oral and documentary evidence, fixed liability on the driver of the alleged vehicle and awarded compensation of Rs.30,000/- payable by the owner of the vehicle, the first respondent herein.

7. Challenging the said award, the appellant/claimant preferred the present appeal before this Court.

8. The learned counsel for the appellant submitted that the appellant got injured by the Lorry bearing Registration No.ADG 1323, which was insured with the second respondent-Insurance Company. The Tribunal has fixed the liability on the first respondent/owner of the Lorry for the reason that the appellant has not produced any documents to prove that the Lorry was insured with the Insurance Company. As the second respondent/ Insurance Company is the custodian of the Insurance Policy and other connected particulars, they themselves can submit the same before the Tribunal. He further submitted that the Tribunal has awarded a very meager amount for the injuries sustained by the appellant in the accident.

9. The learned counsel further submitted that the amount awarded by the Tribunal can very well be paid by the second respondent/ Insurance Company and thereafter, the same can be recovered from the owner of the vehicle.

10. In reply, the learned counsel for the second respondent/ Insurance Company submitted that it is the first and foremost duty of the appellant to produce necessary particulars to prove that the first respondent's Lorry bearing Registration No.ADG 1323 was validly insured with the Insurance Company. Unless the said particulars are furnished, the Insurance Company could not trace out the particulars of the Insurance Policy and other connected records. Further the award was passed against the owner of the vehicle and not against the Insurance Company and hence there is no need for the Insurance Company to pay the award amount.

11. Heard the learned counsel appearing for the appellant / claimant and the learned counsel for the second respondent / Insurance Company and perused the materials available on record.

12. It is the submission of the learned counsel for the appellant that the Lorry which caused the accident was insured with the second respondent and the appellant has given the details about the owner of the vehicle and the Registration number of the vehicle to the Insurance Company. Hence, the Insurance Company can very well find out the Insurance Policy and other connected particulars from their records and submit the same.

13. The said contention of the appellant was refuted by the Insurance Company stating that there is no insurance coverage for the first respondent's Lorry and the vehicular records are also not in order. Even if the said Lorry was validly insured with the second respondent, the Insurance Policy and other connected records have not been produced by the claimant. The party filing the claim petition has the initial burden of proving the claim for coverage. Therefore, the contention of the appellant that it is the burden on the Insurance Company could not be accepted.

14. The second contention of the appellant is that the Insurance Company should first pay the award amount and thereafter they can recover from the first respondent/owner of the vehicle. When the claimant has not produced Insurance Policy or any other particulars to prove that the vehicle is insured with the respondent Insurance Company, the principle of pay and recovery would not arise. Hence, the second contention is also rejected by this Court.

15. In view of the above, this Court is of the view that there is no merit in this appeal and it is liable to be dismissed. Accordingly, this appeal is dismissed and the compensation awarded by the Tribunal at Rs.30,000/- together with interest at the rate of 9% per annum is confirmed. The first respondent / owner of the Lorry bearing Registration No.ADG 1323 is directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.660 of 2001. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CJ Conf)

// True Copy //

Sub Assistant Registrar

dna

To

The Additional District Judge, Fast Track Court No.V,
Chengalpattu, Thiruvallur (Motor Accidents Claim Tribunal)
Thiruvallur.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.4290

CMA.No.1958 of 2007

PP(CO)
RLP(20/10/2021)