IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.03.2021

Judgment Delivered on: 13.08.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1420 of 2013

United India Insurance Co. Ltd.,
No.23, Whites Road III Floor,
Royapuram,
Chennai – 14. ... Appellant/3rd Respondent

Vs.

1. K.Prabhu
S/o. R.Kamalakannan ..1st Respondent/ Petitioner

2. K.Raju ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.3853 of 2008 dated 17.08.2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.S.Parthasarathy for R1.
R2-Not Known

JUDGMENT

(This case was heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 17.08.2012 passed in MCOP.No.3853 of 2008 by the Motor Accidents Claims Tribunal, Small Causes Court -III, Chennai.

2. The case in brief are as follows:

On 09.12.2006 at about 9.30 hours, when the claimant was riding a motor cycle bearing Registration No.TN-04-T-9823 from Kodungaiyur to Mint at Erukkancherry High Road near RNC Shop, Chennai, the Auto Rickshaw bearing Registration No.TN-07-X-1748 driven by its driver in a rash and negligent manner, came at a dangerous speed in opposite direction and collided against the motor cycle driven by the claimant, as a result of which, he sustained grievous injuries. The accident was caused only due to rash and negligent driving of the Auto Rickshaw bearing Registration No.TN-07-X-1748 by its driver. Therefore, the FIR was lodged by the said claimant. On investigation, the Investigating Officer found that the accident was caused by the two wheeler rider hitting the divider on the road and suffering injuries. Therefore, the FIR was closed as mistake of fact. But with an ulterior motive to claim compensation with a fictitious cause of action, the claimant had preferred the claim petition in MCOP.No.3853 of 2008. The accident is alleged to have taken place on 09.12.2006. The accident register was issued by the hospital stating that the two wheeler hit against the road divider on 09.12.2006 at 9.30 am. The injured was taken to hospital by one Thiyagarajan. Subsequently the said Thiyagarajan had filed the FIR as though, the accident was caused by the Auto bearing Registration No. TN-07-X-1748. After investigation, the police found out the truth and dropped the case as mistake of fact.

3. The learned counsel for the appellant/Insurance Company had vehemently opposed the claim petition, giving out the details in the counter. On enquiry, the Tribunal had ignored the contentions raised in the counter by the Insurance Company and granted the award infavour of the claimant. Also it is contended by the learned counsel for the appellant/Insurance Company, the Insurance Policy favouring the Auto rickshaw is a fake one and therefore, the Insurance company is not liable to pay compensation.

4. Though the notice was served to the respondent, there is no representation on his behalf. Therefore, the appeal is taken up for disposal.

5. Point for Consideration

Whether the appeal preferred by the appellant/Insurance Company has to be allowed and the order of the Tribunal granting award has to be set aside.

6. Perused the claim petition filed by the respondent/claimant before the Motor Accident Claims Tribunal, Small Causes Court, Chennai in MCOP.No.3853/2008, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the Insurance Company had not disputed the contention of the claimant regarding the insurance policy. In the light of such circumstances, the Tribunal had granted the award favouring the victim of the accident and against the second respondent/Insurance Company. When the Insurance Company is unable to prosecute the person who had issued the fake insurance policy causing loss to the second respondent/Insurance Company and cheating gullible vehicle owners, the action of the Insurance Company only amounts to denying the effective steps to find out the culprits involved in issuance of fake Insurance Policy. The contentions of the learned counsel for the appellant/Insurance

Company and evidence let in by the Insurance company without investigator's evidence cannot be accepted. Therefore, the contentions of the learned counsel for the appellant/Insurance Company has to be rejected. Therefore, the award passed by the Tribunal is confirmed.

8. The point for consideration is answered in favour of the respondent/Claimant and against the appellant/Insurance Company herein.

In the result, this Civil Miscellaneous Appeal is dismissed. No Costs. The appellant/Insurance Company is directed to deposit the total compensation of Rs.2,34,500/- as determined by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the first respondent/claimant is permitted to withdraw in accordance with law, less the amount if any already withdrawn by him.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Motor Accidents Claims Tribunal,
   III Judge, Court of Small Causes, Chennai.

Copy to:
The Section Officer,
V.R.Section, High Court,Madras.

+1cc to Mr.S.Parthasarathy, Advocate SR.No. 40211

C.M.A.No.1420 of 2013

PMK(CO)
A.SK(27.09.2021)