BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos.1050 and 1051 of 2011
and
M.P(MD)Nos.1 and 1 of 2011

The New India Assurance Company Limited,
43-A/2, Junan Centre,
Promenade Road,
Cantonment,
Trichy. :Appellant/ 2nd Respondent in both appeals

.vs.

1.S.Krishnamoorthy :Ist Respondent/Petitioner in C.M.A(MD)No.1050 of 2011

2.S.Duraisamy :Ist Respondent/Petitioner in C.M.A(MD)No.1051 of 2011

2.K.A.Sahul Hameed :2nd Respondent/Ist Respondent in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act praying this Court to set aside or modify the orders made in M.C.O.P.Nos.270 and 271 of 2009, dated 7.4.2011, on the file of the Motor Accidents Claims Tribunal, Kulithalai.

For Appellant in both appeals :Mr.J.S.Murali

For Respondent-1 in both appeals :Mr.N.Sudhagar Nagaraj

For Respondent-2 in both appeals :No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal, (Sub-Court), Kulithalai in M.C.O.P.Nos.270 and 271 of 2009.

2.M.C.O.P.No.270 of 2009 was filed by Krishnamoorthy/first respondent in C.M.A(MD)No.1050 of 2011 claiming compensation for the injuries sustained in the accident that had taken place on 4.3.2009. Duraisamy/the first respondent in C.M.A(MD)NO.1051 of 2011 had filed M.C.O.P.No.271 of 2009 claiming compensation for the damage caused to the Motor Cycle TN 37 AK 7255. According to the claimants, they were standing in the mud portion of the road along with their motor cycle bearing Registration Number TN 37 AK 7255. At that time, a lorry bearing Registration Number TN 45 AA 8722 came in a high speed and hit against the two-wheeler In the accident, they sustained injury and the vehicle got damaged.

3.The case of the appellant before the Tribunal was that the offending lorry did not cover the liability under the Motor Vehicles Act, but the owner had taken a policy called '' Careers Liability Insurance Policy'', so the appellant cannot be made liable to pay compensation to the claimants. To subtantiate the defense, the appellant-Insurance Company had examined R.W.1-Sivasubramanian, who was working as Assistant Manager in the appellant-Insurance Company and also marked Ex.R1 to Ex.R3. R1 and R2 are the notices issued to the owner of the vehicle seeking particulars of the Insurance Policy. Ex.R3 is the '' Careers Liability Insurance Policy''.

4.The Tribunal, after analysing the evidence adduced by both the parties, awarded compensation of Rs.15,000/- and Rs.20,000/- respectively, making the Insurance Company liable to pay the compensation. Questioning the same, the Insurance Company has come up with these appeals.

5.Heard Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company and Mr.N.Sudhagar Nagaraj, learned counsel appearing for the first respondents in both the appeals and perused the materials available on record.

6.In the instant case, in the counter, it has been specifically stated that the owner of the offending vehicle did not take a policy under the Motor Vehicles Act and they have issued a policy covering the liability for the damage caused to the goods carried in the vehicle. Though the appellant did not produce the acknowledgement for service of notices marked under Ex.R1 and Ex.R2, but the fact remains that the owner of the vehicle appeared before the Court through a counsel and he was expected to know the defense taken by the appellant-Insurance Company.

7.In the counter, the insured has stated that since the vehicle was insured with the appellant and they have to indemnify the liability, but admittedly, no policy was produced by the owner before the Tribunal to show that the appellant is liable to pay compensation for the claim made under the Motor Vehicles Act.

8.The Tribunal, overlooking the evidence adduced by the appellant and the stand taken in the counter, held the Insurance Company liable to pay the compensation to the claimants.

9.When there was no policy to cover the liability under the Motor Vehicles Act, it may not be appropriate on the part of the Tribunal to make the appellant/Insurance Company liable to pay the compensation. Hence, the portion of the award, directing the appellant to pay compensation to the claimants is set aside and the claimants can recover the award amount from the owner of the vehicle by following due process of law.

10.With the above modification, both the Civil Miscellaneous Appeals are allowed. It is represented by the learned counsel for the appellant that the entire award amount has been deposited to the credit of the claim petitions. So the Tribunal is directed to refund the amount lying in the credit of the claim petitions to the appellant/Insurance Company. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

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 Judge,
The Motor Accidents Claims Tribunal,
Kulithalai.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.S.MURALI, Advocate (SR-10794[F] dated 12/03/2021)

+2 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-10800,10795[F] dated 12/03/2021)

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.1050 and
1051 of 2011
and
M.P(MD)Nos.1 and 1
of 2011
11.03.2021

KM(26.05.2021) 4P 7C