BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	**22.01.2021**
Date of Judgment	**20.04.2021**

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1329 of 2015
and
MP(MD)No.1 of 2015

Reliance General Insurance Co. Limited,
No.10/4/4, Thaha Plaza,
South Bye Pass Road,
Vannarpettai,
Tirunelveli. : Appellant/2nd Respondent

Vs.

1.Kovil Mani : 1st Respondent/Petitioner

2.P.Malaiyandi : 2nd Respondent/ 1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, in MCOP No.154 of 2014, dated 24.03.2015.

For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : No appearance

For 2nd Respondent : Mr.S.Siva Subramanian

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, in MCOP No.154 of 2014, dated 24.03.2015.

2.The short facts of the case is that on 08.12.2013 at about 15.00 hours, the claimant was travelling in his Bajaj Motor Bike TN-72-AQ-1742, which was insured with the 2nd respondent Insurance Company, from West to East near Aachimadam Paalam West of RC Church on Tirunelveli-Tiruchendur main road and at the time, a Bullet vehicle TN-72-B-5578 came from the back side and dashed at the back of the Motor Bike and due to it, the claimant was thrown away and sustained fracture on the right leg, apart from grievous injuries in both hands and legs and all over the body and immediately, after the accident, the claimant was taken to TVMC Hospital, Palayamkottai and treated as inpatient for a period of 22 days. A claim petition was filed by the claimant, claiming compensation of Rs.3,00,000/- on the ground that the driver of the offending vehicle has caused the accident.

3.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimant, 3 witnesses were examined and marked 8 documents. On the side of the Appellant Insurance Company, 1 witness was examined and 1 document was marked.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.1,24,870/- together with interest @ 7.5% p.a.

6.Heard both sides and perused the materials available on record.

7.The dispute is in respect of liability. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that at the time of accident, the offending vehicle had no insurance coverage, but the claimant falsely impleaded his vehicle's Insurance Company as 2nd respondent in the claim petition, but the tribunal without considering it, fastened the liability on the Insurance Company to pay the compensation and when there is no insurance coverage, at the time of accident for the offending vehicle, the claimant cannot claim compensation as against his Insurance Company and hence, the appellant Insurance Company/2nd respondent is not liable to pay compensation. Further, the learned counsel appearing for the appellant Insurance Company submitted that the claimant cannot claim compensation as against the Insurance Company of his vehicle and prays that the Civil Miscellaneous Appeal has to be allowed, by setting aside the order of the tribunal. For that, the learned counsel appearing for the appellant/2nd respondent submitted the following rulings:-

(i)(2006)9 SCC 174 (New India Assurance Company Limited Vs. Meera Bai and others);

(ii)(2004)1 TN MAC 135 (Kaliathal and others Vs. New India Assurance Company Limited);

(iii)(2007)2 TN MAC 56 SC (Oriental Insurance Company Vs. Juma Saha and others);

(iv)(2008)2 TN MAC 336 SC (Oriental Insurance Company Vs. Rajini Devi and others); and

(v)(2004)2 TN MAC 144 SC (Dhanraj Vs. New India Assurance Company Limited and another).

8.On the other hand, the learned counsel appearing for the 2nd respondent/claimant submitted that the claimant has insured his vehicle with the Appellant Insurance Company/2nd respondent and paid premium of Rs.50/- towards personal accident and hence, the Appellant Insurance Company/2nd respondent is liable to pay compensation to the claimant and the tribunal has rightly come to the conclusion that the Appellant Insurance Company/2nd respondent is liable to pay the compensation and the 1st respondent/claimant is entitled to claim compensation from the appellant Insurance Company and prays that the Civil Miscellaneous Appeal has to be dismissed.

9.In this case, in respect of the accident, FIR was registered as against driver of the offending vehicle. It is not in dispute that the offending vehicle has no insurance coverage at the time of accident. The claimant stated that his vehicle has insurance coverage and he paid Rs.50/- towards personal claim premium and hence, the appellant Insurance Company/2nd respondent is liable to pay compensation to him.

10.It is admitted that in respect of the accident, FIR and charge sheet were filed as against the driver of the offending vehicle. The claimant has impleaded the owner of the offending vehicle as the 1st respondent in the claim petition and he has also impleaded the Insurance Company as the 2nd respondent, in which his vehicle was insured. In respect of the accident, no FIR was registered as against the claimant. Hence, it is not possible for the claimant to claim compensation from his Insurance Company. It is to be noted that the claimant is a third party in respect of the offending vehicle. Hence, it is held that the claimant is entitled to get compensation from the owner and the Insurance Company of the offending vehicle. It is admitted that at the time of accident, the offending vehicle has no insurance coverage. Hence, it is held that the appellant Insurance Company/2nd respondent is not liable to pay the compensation to the claimant and the 2nd respondent/1st respondent is liable to pay the compensation to the claimant.

11.In the result, this Civil Miscellaneous Appeal is allowed by setting aside the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay the award. The appellant Insurance Company is not liable to pay the compensation to the claimant and the 2nd respondent/1st respondent, being the owner of the offending vehicle is liable to pay the compensation to the claimant. It is open to the claimant to claim the award amount, which was awarded by the Tribunal, from the owner of the offending vehicle by filing appropriate proceedings, in the manner known to law. The appellant Insurance Company is permitted to get back the amount already deposited, if any, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

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 Special Subordinate Judge,
The Motor Accident Claims Tribunal/
Special Sub Court, Tirunelveli.

Copy to:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-16778[F] dated 21/04/2021)

CMA(MD)No.1329 of 2015
20.04.2021

RD(17.08.2021) 4P 5C