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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020

Pronounced On : 22.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.26 of 2015

The United India Insurance Company Limited,
Marthandam, Nallur Village,
Vilavancode Taluk,
Kanyakumari District. : Appellant/3rd Respondent

Vs.

1.Pushpabai :1st Respondent/Petitioner
2.Ambili :2nd Respondent/1st Respondent
3.Dennis :3rd Respondent/2nd Respondent

Notice to the second respondent is dispensed with vide order dated 14.12.2017.

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2012 passed in M.C.O.P.No.7 of 2009 on he file of the Motor Accidents Claims Tribunal (Subordinate Judge), Kulithurai.

For Appellant : Mr.G.Prabhu Rajadurai
For 1st Respondent : Mr.T.Selvakumaran

For 3rd Respondent : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 09.10.2012 passed in M.C.O.P.No.7 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Kulithurai.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.72,274/- with interest at 7.5% per annum to the claimant, who suffered injuries in an accident occurred on

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26.04.2007, challenged the liability fastened on it, more particularly on the ground of want of policy coverage on the date of accident.

3.The only and short point that arises for consideration is as to whether the tribunal erred in mulcting liability on the Appellant/Insurer, despite production of necessary evidence to show that there was no insurance coverage for the offending vehicle on the date of accident?

4.The learned counsel for the Appellant would strongly contend that the tribunal has miserably failed to consider that the policy marked as Ex.R.1 was for the period from 28.02.2006 to 27.02.2007 and Ex.R.2 policy was only for the period from 01.05.2007 to 30.04.2008, that the offending Motorcycle did not have insurance coverage on 26.04.2004 the alleged date of accident, that the tribunal erred in directing the insurer to pay the compensation when there was no effective policy on the relevant time, that the tribunal has also failed to consider that the Motorcycle rider did not have an effective driving license at the time of accident and that since there was no insurance coverage, the question of fastening liability on the insurer does not arise at all.

5.The learned counsel for the first respondent has fairly represented that since the insurance policies are very much available before the Court, the same may be considered.

6.As rightly pointed out by the learned counsel for the Appellant/insurer, even in their counter statement filed before the tribunal, the insurer has taken a specific defence that the alleged vehicle bearing Registration No.TN 74 X 8185 Motorcycle has no subsistence of policy with the insurer on the alleged accident date 26.04.2007. Moreover, the insurer has also furnished the particulars of two policies and the period of coverage in para 4 of their counter statement, which is extracted hereunder:

> " 4.The alleged accident is on 26-04-07, whereas the policy for the vehicle with the 3rd respondent is from 01-05-07 to 30-4-08. The previous policy for the same vehicle with the 3rd respondent is policy No.091601/31/05/01/00008930 in the name of 2nd respondent for this vehicle TN 74 Y 8185 Motor Bike covering the period 28-2-06 to 27-2-07. There is no subsistance of policy for the said vehicle for the period from 28-2-07 to 01-5-07 whereas the alleged accident is on 26-4-07."

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7.Moreover, as rightly contended by the Appellant's counsel, the learned trial Judge in her judgment has mentioned about the stand taken by the insurer, while narrating the counter statement averments. But in para 7, while deciding the point No.2 as to whether the claimant is entitled to get the amount, after observing that the insurance policy was in force, has decided that the respondents 1 to 3 therein were jointly and severally liable to pay the compensation. As rightly argued by the learned counsel for the Appellant, the learned trial Judge has not at all dealt with the defence taken by the insurer and the evidence adduced, therefor.

8.Admittedly, the claimant has also produced the copy of the insurance policy under Ex.P.8 and whereas the insurer has produced the insurance policies under Ex.R.1 and Ex.R.2 respectively.

9.On perusal of Ex.P.8, Ex.R.1 and Ex.R.2, it is evident that Ex.P.8 and Ex.R.2 are one and the same and it is for the period between 01.05.2007 and 30.04.2008 for the vehicle bearing Registration No.TN 74 X 8185. Ex.R.1/policy, which is also for the same vehicle is for the period between 28.02.2006 and 27.02.2007. Even according to the claimant, the alleged accident was occurred on 26.04.2007, after expiry of Ex.R1/policy and before the commencement of Ex.R.2 (Ex.P.8) policy. Considering the above, it is very much clear that the offending vehicle bearing Registration No.TN 74 X 818 was not having insurance coverage on the date of accident i.e. on 26.04.2007. But, the learned trial Judge, without considering the same, has passed the impugned award mechanically fastening liability on the insurer. Since there was no substance of insurance policy on the date of accident, the question of mulcting liability on the insurer does not arise at all and as such, the finding of the trial Court that the Appellant and respondents 1 and 2 herein were jointly and severally liable for the claim and the direction to the Appellant/insurer to pay the compensation to the claimant is liable to be set aside and the award is to be sustained as against the third respondent/owner of the vehicle. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

10.In the result, this Civil Miscellaneous Appeal is allowed and the impugned award dated 09.10.2012, passed in M.C.O.P.No.7 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Kulithurai, is set aside. The third respondent/owner is directed to deposit the award amount before the tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. In case, if the Appellant has already deposited the award amount and the same withdrawn by the claimant, the Appellant is hereby permitted to recover the same from the third respondent/owner. If not withdrawn by the claimant, then the

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Appellant/insurer is entitled to withdraw their amount with accrued interest. Parties are directed to bear their own costs.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

das

To

1.The Motor Accidents Claims Tribunal/
Subordinate Judge, Kulithurai.

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

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-2131[F] dated 27/01/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-2259[F] dated 27/01/2021)

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