



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.12.2020

Pronounced On : 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.316 of 2015

and

M.P.(MD)No.1 of 2015

The Branch Manager,
The United India Insurance Company Limited,
Kumbakonam.

: Appellant / 2nd Respondent

Vs.

1.Jeeva

2.A.C.Krishnasamy

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 27.10.2010, passed in M.C.O.P.No.211 of 2009, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur at Kumbakonam.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred challenging the award passed in M.C.O.P.No.211 of 2009, dated 27.10.2010, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2.The Appellant/Insurer, who was made liable to pay compensation of Rs.30,939/- with interest at 7.5% per annum to the claimant/injured, for the injuries suffered by him, consequent to an accident occurred on 10.03.2008, challenged the liability mulcted on it and more particularly, on the ground of want of policy coverage.

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3.The first respondent herein is the claimant/injured. The second respondent, who is the owner of Royal Enfield Motor Cycle bearing Registration No. TN 57 A 5596 had remained ex-parte before the tribunal.

4.During enquiry, the claimant has examined herself as P.W.1 and exhibited 13 documents as Ex.P.1 to Ex.P.13. On the side of the Appellant/Insurer, their Executive Officer was examined as R.W.1 and exhibited the Insurance Policy under Ex.R.1.

5.The trial Court, upon considering the evidence, both oral and documentary has passed the impugned award dated 27.10.2010 fastening the liability on the Appellant/Insurer, directing them to pay a compensation of Rs.30,939/- with interest at 7.5% per annum to the claimant. Aggrieved by the said award, the Insurer has come forward with the present appeal.

6.The only point that arises for consideration is whether the tribunal erred in mulcting liability on the Appellant/Insurer, despite the production of ample materials and evidence to show that there was no policy coverage on the date of accident?

7.The learned counsel for the Appellant/Insurer would strongly contend that the tribunal completely overlooked the evidence of R.W.1 and Ex.R.1/policy, which was obtained only after the accident, that the tribunal ought to have dismissed the claim as against the insurer on the ground that the offending vehicle was not at all covered under a policy of insurance on the date of accident and that the tribunal has also failed to consider that neither the first respondent nor the rider of the bike had any license to drive the two wheelers.

8.As rightly contended by the appellant side, in the counter statement filed before the tribunal, they have denied that the two wheeler Royal Enfield was insured with them. Since they were not sure about the existence of the Insurance Policy, they have pleaded that they are taking steps to find out whether the Royal Enfield Motor Cycle bearing Registration No.TN 57 A 5596 was insured with them and at the same time, for abundant caution, they have made denial. No doubt, there was no specific denial. But, during enquiry, they have examined their Executive Officer as R.W.1 and he would specifically depose that the Royal Enfield Motor Cycle was not at all insured with them on the date of accident and that therefore, they are not liable for the claim.

9.During cross examination, he would say that the owner of the Royal Enfield Motor Cycle was having Insurance Coverage only from



12.03.2008 and that the vehicle was not at all insured with their office on the date of accident. He would further reiterate that the accident was occurred on 10.03.2008 and application for insurance was made only on 11.03.2008.

10. On perusal of Ex.R.1/Insurance Policy, the period of insurance coverage was between 00.00 hours on 12.03.2008 to midnight 11.03.2009. No doubt, it is admitted by the Appellant/Insurer that premium amount was collected on 11.03.2008, but as already pointed out, the policy was issued for the period covering from 12.03.2008 to 11.03.2009. Admittedly, the accident was occurred on 10.03.2008.

11. As rightly contended by the learned counsel for the appellant, the learned trial Judge has not even chosen to refer the evidence of R.W.1 nor the policy under Ex.R.1. The tribunal after holding that the rider of the Royal Enfield Motor Cycle was responsible for the accident and both the respondents are jointly and severally liable, concluded and mulcted liability on the insurer, directing them to pay compensation.

12. As rightly argued by the learned counsel for the appellant, the learned trial Judge without even touching the main defence of the insurer, that there was no insurance coverage at all on the date of accident, has proceeded mechanically and passed the impugned award. Since there was no subsisting insurance policy coverage on the date of accident, this Court has no other option, but to hold that the impugned award mulcting liability on the insurer is liable to be set aside and consequently it goes without saying that the owner of Royal Enfield Motor cycle is liable for the claim. 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.

13. In the result, Civil Miscellaneous Appeal is allowed and the impugned award passed in M.C.O.P.No.211 of 2009, dated 27.10.2010 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Thanjavur at Kumbakonam as against the Appellant/insurer is set aside. In case, if the award amount was already deposited and was withdrawn by the claimant, then the appellant Insurer is hereby permitted to recover the same from the owner of the offending vehicle. In case, if the award amount is not deposited till now, then the owner of the Royal Enfield Motor Cycle is directed to deposit the award amount with interest within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant is permitted to withdraw the entire amount with interest and costs, on due application before the Tribunal. Parties are directed to



bear their own costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/ /2021

Sub Assistant Registrar(CS)

das

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Thanjavur at Kumbakonam.

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

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-482[F] dated
07/01/2021)

C.M.A (MD) No.316 of 2015
and
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06.01.2021

KM (08.02.2021) 4P 5C