BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	17.03.2021
Date of Judgment	15.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.1107 and 1108 of 2018
and
CMP(MD)Nos.11282 and 11283 of 2018

(1)CMA(MD)No.1107 of 2018:-

Iffco-Tokio General Insurance Company Limited,
Through its Branch Manager,
Number 82, 3rd Floor,
Court Road,
Nagercoil. : Appellant/2nd Respondent

Vs.

1.Vijay : 1st Respondent/Petitioner
2.Kulaikathar : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 24.10.2017 made in MCOP No.1321 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court), Thirunevelli.

(2)CMA(MD)No.1108 of 2018:-

Iffco-Tokio General Insurance Company Limited,
Through its Branch Manager,
Number 82, 3rd Floor,
Court Road,
Nagercoil. : Appellant/2nd Respondent

Vs.

1.Sivan : 1st Respondent/Petitioner
2.Kulaikathar : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 24.10.2017 made in MCOP No.1322 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court), Thirunevelli.

For Appellant : Mr.V.Sakthivel

For 1st Respondent : M/s.Leema Mary Savariraj (Legal Aid Counsel)

For 2nd Respondent : No appearance

COMMON JUDGMENT

Challenge made in these appeals is to the common award, dated 24.10.2017 made in MCOP Nos.1321 and 1322 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court), Thirunevelli.

2.The short facts of the case is that on 17.10.2014 at about 1.00 pm, the claimant in MCOP No.1321 of 2014 was travelling in a Car TN-76-A-4161, while driving the same by the claimant in MCOP No.1322 of 2014 on the Tirunelveli-Kanyakumari Four Ways near Palavoor Junction, at that time, the TATA ACE TN-72-AW-6786 came from the opposite direction suddenly without showing any hand signal or switch on the indicator lamp and rashly and negligently turned the vehicle towards Palavoor Branch road, as a result of which, the driver one Sivan, who was not expected the sudden cross of the TATA ACE unable to stop the vehicle and TATA ACE hit in front of the Car portion and as a result of which, the driver of the Car Sivan and the passenger travelled in the Car have sustained multiple injuries all over the body, besides fracture over the right forehead and immediately they were taken to Manuel Hospital Nagercoil and admitted as inpatient for 10 days. Both the claimants filed a separate claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained in the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.74,000/- in respect of MCOP No.1321 of 2014 and Rs.43,500/- in respect of MCOP No.1322 of 2014 along with interest @ 9% p.a. Aggrieved by the common award of the tribunal, the appellant Insurance Company is before this court with these appeals.

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

5.The main contention of the appellant/2nd respondent is that at the time of accident, the offending vehicle had no insurance coverage and hence, they are not liable to pay the compensation. On the other hand, the learned counsel appearing for the 1st respondent/claimant CMA(MD)Nos.1107 and 1108 of 2018 argued that at the time of accident, the offending vehicle had insurance coverage and hence, the Insurance company is liable to pay the compensation to the claimants.

6.On the side of the appellant/2nd respondent, it is stated that the accident took place on 17.10.2014 at 1.00 pm, but the policy was taken on 18.10.2014 from 00.00 hours to 17.10.2015 at 23.59 hours and the above policy with the appellant Insurance Company is new one and it was not a renewal of policy with this appellant, sine the policy is a new one with this appellant, the appellant Insurance Company has issued a policy with effect from 18.01.2014 at 00.00 hours to 17.10.2015 at about 23.59 hours and unless the Insurance Company accepts and issue policy, person who paid premium cannot come forward with plea that the Insurance Company is having obligation to pay the compensation and hence, they are not liable to pay the compensation to the claimants. For that, the learned counsel appearing for the appellant/2nd respondent submitted the following rulings:-

(1).2002 ACJ 613 (Kalaivani and otheres Vs. K.Sivashankar and another);

(2)2013(1) TN MAC 103 (Oriental Insurance Company Limited Vs Vedathal and others);

(3)2014(1)TN MAC 63 (National Insurance Company Limited Vs. M.Ponnaiyan alias Kollappan and others);

(4)2004(1) TN MAC 174 (National Insurance Company Limited Vs. Geetha and others); and

(5)2017(I)TN MAC 168 (The Branch Manager National Insurance Company Limited Vs. Vijayalakshmi).

7.In this case, to prove that at the time of accident, there was no insurance coverage, the official of the appellant/2nd respondent was examined as RW3 and the Insurance Policy was marked as Ex.R5. On perusal of Ex.R5, it reveals that the owner of the vehicle took policy through the agent. In Ex.R5, there was a column for the policy submission. On perusal of the policy submission details, it is stated that the policy was submitted on 17.10.2014 at 09.22 am. Hence, it reveals that the agent, after receipt of the amount submitted the policy details to the officials of the Insurance Company. But the 2nd respondent wrongly stated the date of insurance as 17.10.2014 at 21.22 hours. In respect of the offending vehicle, policy submission details submitted from the agent was received by the 2nd respondent office on 17.10.2014 at 09.22 hours. Hence, it reveals that in respect of the offending vehicle, premium was received prior to 17.10.2014 at 9.22 hours. It is to be noted that the alleged accident took place on 17.10.2014 at 13.00 hours. Hence, it is held that at the time of accident, the offending vehicle had insurance coverage. Hence, the argument put forth on the side of the appellant/2nd respondent stating that there was no insurance coverage at the time of accident is not at all acceptable. Hence, this court finds that the tribunal, after careful perusal of the documents available on record given a correct findings, which do not require interference by this court and accordingly, the common award of the tribunal is confirmed.

8.In the result, both the Civil Miscellaneous Appeals are disposed of, by confirming the common award passed by the tribunal. The interest awarded by the tribunal is reduced to 7.5% p.a from 9% p.a. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(P & A)

// 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 Section Officer, V.R Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to M/s.V.SAKTHIVEL, Advocate (SR-19405 & 19406[F] dated 16/06/2021)

C.M.A(MD)Nos.1107 and 1108 of 2018
and
CMP(MD)Nos.11282 and 11283 of 2018
15.06.2021

dks(CO)
TR(15.07.2021) 4P 6C