IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.82 of 2022

C.K. Senthil .. Appellant

vs.

1. Ranjithkumar

2. M/s. TATA AIG General Insurance
Company Ltd.
Regd. Office at 15th Floor
Tower A, Peninsule Business Park,
Ganpatvao Kadam Marg, Off Senapati Bapat Marg,
Lower Pavel, Mumbai 400 013
Having Branch Office May Flower Tower Castal,
1st Floor, No.72, Dr. Balasundaram Road,
Coimbatore 641 018 ..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 17.09.2021 in M.C.O.P. No. 6 of 2017 on the file of the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem, for enhancement.

For Appellant	: Mr.A. Murugan
For R1	: Notice served, no appearance.
For R2	: Mr. J. Michael Visuvasam

JUDGMENT

The only issue involves in this Civil Miscellaneous Appeal is whether the insurance policy which has been exhibited as that of the first respondent vehicle is a fake policy thereby absolving the Insurance Company from compensating the appellants.

2. The facts in brief are as follows:

2.1. On 23.07.2017, the petitioner was riding his TVS XL Super bike, bearing Registration No.TN 54 E 4594, from Attur to Salem (east-west direction) and when he neared Ayyothiyapattinam, the rider of the TVS XL Super bearing Registration No.TN 54 J 6305 belonging to the first respondent and alleged to be insured with the second respondent drove the same in a rash and negligent manner and, without any signal, suddenly swerved to the right, as a result of which, he had hit the petitioner's vehicle, due to which, the appellant sustained injuries and multiple fractures. The appellant had therefore, filed M.C.O.P. No.6 of 2017 on the file of the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem.

2.2. The 2nd respondent had, in a very clear terms, stated that the policy which has been projected by the claimant is not the policy issued by the Insurance Company and the same was a fabricated one and therefore, the 2nd respondent was not obliged or liable to indemnify the 1st respondent by compensating the appellant.

2.3. The tribunal below, after considering the records, came to the conclusion that there was no contract of insurance between the 1st respondent and the 2nd respondent/Insurance company and arrived at a compensation of Rs.7,24,847/-. The 1st respondent was directed to pay the same to the appellant after deducting 30% towards contributory negligence of the petitioner. Challenging the exoneration of the Insurance Company and deducting 30% towards contributory negligence upon the appellant, the appellant is before this Court.

3. Mr. A. Murugan, appearing on behalf of the appellant would submit that, being a third party, the appellant will not be in a position to prove the authenticity of the policy and they are only filing the documents as received from the police authorities or from the Motor Vehicle Inspector. He would further submit that though the witness R.W.1 would

state that a police complaint has been filed, they have not come forward with the result of the police investigation and therefore, he would contend that the 2nd respondent Insurance Company is bound to indemnify the appellant. He would also question the award of the Tribunal in mulcting 30% contributory negligence on the appellant herein.

4. Mr. J. Michael Visuvasam, appearing on behalf of the 2nd respondent would submit that a mere perusal of the Insurance Policy which has been marked as Ex.P10 along side the specimen policy marked as Ex.R1 would show the glaring discrepancies. He has pointed out several glaring omissions in Ex.P10 Insurance Policy which has been filed in the instant case. He would therefore submit that the 1st respondent has deliberately remained ex-parte, despite knowing that the 2nd respondent/Insurance Company has been exonerated on the ground that there is no policy cover for the vehicle. He would further submit that the driver of the 1st respondent vehicle did not possess valid license and further he was also not wearing helmet and hit the appellant from behind.

5. Heard the learned counsel on both sides.

6. The 2nd respondent/Insurance company has filed Ex.R2,

which is the computer screen shots of the policy number pertaining to the vehicle as provided in Ex.P1 FIR. A perusal of the said document would clearly shows that there is no policy bearing the policy number given in Ex.P10 policy. The screen shot also shows that the vehicle bearing Registration No. TN 54 J 6305 is not registered in their company records. This would clinchingly prove that the policy which has been produced is not a genuine policy. Therefore, the finding of the Tribunal that the policy is not a genuine policy and thereby exonerating the 2nd respondent/ Insurance Company is well in order. As regards the request of the counsel for the appellant for reduction of the contributory negligence, the same cannot be acceded to since the appellant has not only driven the vehicle without insurance but has also not worn helmet. Therefore , I see no reason to interfere with the award passed by the Tribunal below and consequently, this Civil Miscellaneous Appeal stands dismissed. No costs.

23.06.2022

bga
Index : Yes/No
Speaking / Non-speaking order

P.T.ASHA, J.

bga

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Salem.

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