BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.06.2022

Delivered On : 08.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.898 of 2013

National Insurance Co. Ltd.,
Through its Branch Manager,
No.37-C, S.N.High Road,
Tirunelveli. .. Appellant /2nd Respondent

Vs.

1.Thiyagarajan ... 1st Respondent / Petitioner
2.Ravikumar ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 05.04.2011, made in M.C.O.P.No.23 of 2008, on the file of the Motor Accident Claims Tribunal (Sub ordinate Court), Ambasamudram.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondent No. 1 : Mr.V.Ramakrishnan
For Respondent No.2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 05.04.2011, made in M.C.O.P.No.23 of 2008, on the file of the Motor Accident Claims Tribunal (Sub ordinate Court), Ambasamudram. The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.23 of 2008, is as follows:

The petitioner purchased the vehicle, viz., Maruthi Omni Van, bearing Registration No.TN-74-F-6511, from the first respondent. The vehicle was insured with the second respondent. The vehicle met with an accident on 27.04.2008. The vehicle was repaired in M/s. Classic Auto Mobiles. The second respondent's officer visited there and he inspected the vehicle. The petitioner submitted a claim application before the second respondent on 05.05.2008 along with relevant documents. The second respondent sent a reply on 07.05.2008, rejecting the petitioner's claim. The petitioner sent a legal notice on 20.05.2008. The second respondent sent a reply notice on 24.05.2008. From the date of sale of the vehicle, the petitioner steps into the shoes of the first respondent and the Insurance Company is liable to pay damages to the vehicle. The Insurance coverage goes with the vehicle and not with the owner. The petitioner claimed a sum of Rs.1,66,742/- as compensation.

3. Brief substance of the counter filed by the first respondent, in M.C.O.P.No.23 of 2008, is as follows:-

The petition is not maintainable. The vehicle met with an accident on 27.04.2008. The vehicle belonged to one Ravikumar. There is no contractual liability between the petitioner and the Insurance Company. The petitioner failed to file any complaint before the police station about the alleged accident. The petitioner failed to transfer the insurance policy in his name.

4. On the side of the claimant, 3 witnesses were examined and 9 documents were marked. On the side of the respondents, 1 witness was examined and 4 documents were marked. After trial, the Tribunal awarded a sum of Rs.50,000/- towards damages. Against the award amount, the appellant / Insurance Company has filed this appeal.

5. On the side of the appellant, it is stated that the Tribunal ought to have appreciated the defence of the Insurance company in the proper prospective. The

Tribunal ought to have considered that the petition is not a claim by a third party. It is a claim for own damages, which is out of the purview of adjudication under the Motor Vehicles Act.

6. The Tribunal constituted under the Motor Vehicles Act are empowered to deal only the claims of third party and the claim for own damages by the owner of the vehicle against his own insurance Company is out side of the scope of the Motor Vehicles Act. The claimant is not a registered owner of the vehicle and there is no contractual liability on the claimant and the insurance company. Section 157 of the Motor Vehicles Act is applicable only to third party not to the owner of the vehicle. The owner of the vehicle cannot take advantage of the deemed transfer provision under the M.V. Act. owner of the vehicle is not entitled to the benefit of own damages, unless the insurance policy is transferred in his name.

7. To substantiate the claim, a judgment of the Hon'ble Supreme Court reported in ***2007-1-TNMAC – 301(SC) [National Insurance Co. Ltd., V. Laxmi Narain Dhut]*** is cited, wherein, it is stated as follows:-

> *"Applicability of cases other than third party risks namely to own damage case. Section 149 relates to duty of Insurer to satisfy judgments and awards against persons insured in respect of third party risks. Language of provision itself makes clear that it only*

relates to third party risks and claims. Supreme Court in Swaran Singh death with scope and ambit of under Sections 147 and 149, elaborately and after tracing history of compulsory insurance and rights of third parties held that concerned cases mainly concerned with third party risks under policy and that any condition in policy whereby right of third party taken away would be void and that breach of condition of contract of insurance required to be proved by Insurance Company for avoiding its liability."

8. On the side of the appellant, a judgment of this Court reported in ***2012-2-TNMAC-388 (Royal Sundaram Alliance Insurance Co. Ltd., V. Gangadevi)*** is cited, wherein, it is stated as follows:-

"7. In the present case, Section II of the policy sets out the liability of the Insurance Company insofar as the third party claim is concerned. In such a case, the compensation under the provisions of the Motor Vehicles Act can be fastened on the owner of the vehicle to be indemnified by the Insurance Company.

8. As far as Section III of the Policy is concerned, the contract is between the owner of the vehicle and the Insurance Company iter se. Therefore, the right to claim compensation under Section III of the contract of Policy will not fall within the provisions of the Motor Vehicles Act. The owner of the Vehicle is entitled to enforce the terms of Section III of the Contract of Policy as per law and not under the provisions of the Motor Vehicles Act. "

9. On the side of the respondent, it is stated that the policy was inforce at the time of accident. The failure on the part of the owner of the two wheeler in transferring the policy, cannot be a ground for rejecting the claim petition.

10. A perusal of the records reveals that the claimant is a subsequent purchaser of the vehicle. He failed to transfer the policy in his name. There is no contract between the claimant and the insurance company. The claim is not by a third party. The claim is by the owner of the vehicle, claiming damages. It is stated that no FIR was registered, regarding the alleged accident. The claim for own damages is beyond the scope of the claim petition under the Motor Vehicles Act. Judgments cited by the appellant are applicable to the facts of the present case and hence, this Appeal is allowed and the order of the Tribunal is set aside, with liberty to the first respondent / claimant to approach the concerned forum for any relief, if he is so advised. The appellant / Insurance Company is permitted to get refund of the amount, if any, deposited by him.

08.08.2022

Index : Yes/No
Internet : Yes/No
Ls

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 Motor Accident Claims Tribunal
(Sub ordinate Court),
Ambasamudram.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.898 of 2013

08.08.2022