BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2022

Delivered On : 26.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.693 of 2018
and Cros.Obj.(MD)No.15 of 2022

C.M.A(MD)No.693 of 2018

S.Murugan .... Appellant / 3rd Respondent

Vs

1.M.Dhanabalan ... 1st Respondent / Petitioner

2.P.Srinivasan

3.M/s.United India Insurance Company Limited,
Rep. through its Divisional Manager,
Divisional Office – IV,
52, South Masi Street,
Madurai – 625 001. ... Respondents 2&3 / Respondents 1&2

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 26.02.2018, made in M.C.O.P.No.922 of 2013, on the file of the Motor Accidents Claims Tribunal – IV Additional Sub Judge, Madurai insofar as the pay and recovery alone.

For appellant : Mr.V.S.Kishok Kumar

For R2 : Mr.K.Ravi

For R3 : Mr.A.Ilango

For R1 : No appearance

Cros.Obj.(MD)No.15 of 2022

P.Srinivasan .... Cross objector /2nd Respondent/ 1st Respondent

Vs

1.S.Murugan ... 1st Respondent / appellant / 3rd respondent

2. M.Dhanabalan ... 2nd Respondent / 1st Respondent / petitioner

3.M/s.United India Insurance Company Limited,
Rep. through its Divisional Manager,
Divisional Office – IV,
52, South Masi Street,
Madurai – 625 001. ... 3rd Respondent / 3rd Respondent / 2nd Respondent

PRAYER: Cross Objection is filed under Order XLI Rule 22 of C.P.C., against the judgment and decree passed in M.C.O.P.No.922 of 2013, dated 26.02.2018, on the file of the Motor Accidents Claims Tribunal – IV Additional Sub Judge, Madurai, insofar as the findings related to pay and recover order in the above M.C.O.P. No.922 of 2013.

For Cross objector : Mr.K.Ravi
For R1 : Mr.V.S.Kishok Kumar
For R3 : Mr.A.Ilango
For R2 : No appearance

COMMON JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 26.02.2018, made in M.C.O.P.No.922 of 2013, on the file of the Motor Accidents Claims Tribunal – IV Additional Sub Judge, Madurai. The appellant herein is the third respondent, the first respondent herein is the claimant and the respondents 2 & 3 herein are the Respondents 1 and 2 in the original M.C.O.P. Petition. Against the said award, the claimant has filed the Cross Objection.

2. Brief substance of the claim petition, in M.C.O.P.No.922 of 2013, is as follows:

On 26.09.2010, at about 9.00 pm., when the petitioner was walking keeping the extreme left of the road, near Meyyan Adni Kovil, a TVS Suzuki Max motorcycle bearing Registration No.TN-59-C-1291 was driven by its driver in a rash and negligent manner, dashed the petitioner from behind. He sustained injuries. The petitioner claimed a sum of Rs.7,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent, in M.C.O.P.No.922 of 2013, is as follows:

The ownership of the vehicle is not admitted. The first respondent has sold the motorcycle to one Murugan S/o. Shanmugam, on 10.04.2010. The said Murugan has issued a delivery note. The first respondent is neither the owner nor the possessor of the vehicle, at the time of accident.

4. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.922 of 2013, is as follows:

The manner of accident is to be proved. The petitioner has to prove that the rider of the two wheeler has valid driving licence. The petitioner has to prove that the vehicle was insured with this respondent. The petitioner sustained only simple injuries. The petitioner has to prove his age, occupation, nature of injury, disability, medical expenses through proper and documentary evidence. The claim is excessive.

5. Brief substance of the counter filed by the third respondent, in M.C.O.P.No.922 of 2013, is as follows:

The third respondent purchased the vehicle on 10.04.2010 and on 11.06.2010, he sold the vehicle to one Kathiresan, S/o. Sakthivel. On the date of accident, the third respondent was not the owner of the vehicle. The petition is bad for non-joinder of necessary parties and prayed the petition to be dismissed.

6. On the side of the claimants, 3 witnesses were examined and 4 documents were marked. On the side of the respondents, 3 witness were examined and 3 documents were marked. 2 documents were marked as Ex.X1 and Ex.X2. After considering both sides, the Tribunal awarded a sum of Rs.2,85,800/- as compensation to be paid by the second respondent and to be recovered from the third respondent.

7. Against the order, the third respondent / appellant has filed this appeal on the following grounds:-

The Tribunal has failed to consider Ex.R3 – delivery note, dated 11.06.2010, denoting the sale and delivery of the vehicle to one S.Kathiresan. At the time of accident, the appellant was neither the owner nor the possessor of the two wheeler, as defined in Section 2 (30) of the Motor Vehicles Act. The Tribunal has failed to consider that the name of the person reflected in the Registration Certificate, alone is the owner of the vehicle and not the others. The Tribunal has failed to consider the various judgments of the Hon'ble Apex Court. The Insurance Policy was valid.

8. Brief substance of the cross objection is as follows:-

The Registration Certificate is in the name of the cross objector. The Insurance policy of the vehicle was in the name of the cross objector. The Insurance Company and the appellant are liable to pay the compensation. There was no violation of policy condition under Section 149 (2) of the Motor Vehicles Act. The third respondent has failed to serve notice under order – 12, Rule - 8 of C.P.C to the cross appellant and the driver at the time of accident, to produce the driving licence. But, the third respondent has examined only the Regional Transport Officer and the Insurance Company had not discharged its burden to establish that the motorcyclist had no driving licence. The vehicle was sold on 10.04.2010 and obviously the cross appellant has not authorised the driver at the time of accident. There was no breach of condition on the side of the cross appellant. Under Section 157 of the Motor Vehicles Act, the Insurance policy go with the ownership and it is automatically transferred to the buyer of the vehicle with regard to the third party liability.

9. On the side of the appellant, it is stated that the original owner was one Srinivasan, the appellant purchased the vehicle on 10.04.2010. On 11.06.2010, the appellant sold the vehicle to one Kathiresan. The date of accident was subsequent to the date of the sale. But, the Tribunal has failed to note the same and has ordered the Insurance Company to pay compensation and to recover the same from the appellant. Only the person, whose name reflected in the Registration Certificate, is liable to pay compensation and the appellant is not liable to pay compensation and there was Insurance coverage and that there is no necessity for the appellant to pay compensation.

10. On the side of the appellant, it is stated that on transfer of ownership as per Section 151 of the Motor Vehicles Act, the policy is automatically transferred and that there is no necessity to order of recovery, from the owner of the vehicle.

11. A judgment of the Hon'ble Supreme Court reported in ***2018-2-TNMAC-151 (SC) (Shamanna and another V. Divisional Manager, Oriental Insurance CO. Ltd., and others)*** is cited, wherein, it is stated as follows:-

> *"Non possession of valid driving licence is breach of terms and conditions of policy of insurance. The Tribunal directing the Insurer to pay and recover. The High Court is appeal setting aside the direction to "pay and recover" and holding owner/ insured liable to pay. The view taken by the High Court that "pay and recover" invoked by Apex Court in exercise of its discretionary power under Article 142 of the Constitution of India and that power under Section 142 vested only with Apex Court and not with High Court and Tribunal."*

12. On the side of the Insurance Company, it is stated that the Insurance Company is not at all liable to pay compensation. Only the registered owner is entitled for indemnity. It is the duty of the purchaser to intimate the transfer within 14 days from the date of transfer. No notice was given to the Insurance Company, to change the name in the policy. The liability ought to have fixed only on the owner not on the

Insurance Company. The driver of the vehicle had no driving licence and the claimants are entitled to claim compensation only from the driver and owner and not from the Insurance Company.

13. On the side of the Insurance Company, it is stated that a owner of the vehicle has statutory duty to see that the driver of the vehicle holds valid driving licence. A judgment of the Hon'ble Supreme Court reported in ***2008- ACJ-1307 (Sardari and others V. Sushil Kumar and others)*** is cited, wherein, it is stated as follows:-

> *"Whether Insurance Company was rightly exempted from liability; Held that owner of the vehicle has a statutory obligation to see that the driver of the vehicle, whom he authorised to drive holds a valid licence."*

14. On the side of the Insurance Company, it is further stated that a person in whose name motor vehicle stands registered can be treated as the owner within definition of Section 3(30) of the Motor Vehicles Act. A judgment of the Hon'ble Supreme Court, reported in ***2018-2-CTC-91 (Naveen Kumar V. Vijay Kumar and others)*** is cited, wherein, it is stated as follows:-

" A person, in whose name Motor Vehicle stands registered, alone can be treated as "Owner" within definition of Section 2 (30), where registered owner has purported to transfer vehicle but continues to be reflected in records of Registering Authority as Owner of vehicle, he would not stand absolved of liability. The claimant, for compensation, ought not to be burdened with Registering Authority. A person, whose name reflected in records of Registering Authority, is owner of vehicle and liable to pay compensation".

15. On the side of the appellant, it is stated that the vehicle was sold to one Kathiresan and that the delivery note was marked as Ex.R3. The contention of the second respondent / cross objector is that the vehicle was sold to the appellant and the appellant admitted that he purchased the vehicle from the second respondent /cross objector and that there is no necessity to recover the award amount from the appellant.

16. It is seen that the vehicle was not registered in the name of the appellant and the policy was not transferred to the name of the appellant. Since the appellant admitted that he purchased the vehicle, the admitted fact need not be proved and the cross objector cannot be made liable for payment of compensation.

17. The appellant purchased the vehicle from the second respondent herein / cross objector and that the appellant failed to prove that he in turn has sold the vehicle to one Kathiresan, the delivery note – Ex.R3 was not supported by any other documentary evidence. The said Kathiresan was not examined as a witness and the delivery note was not at all proved by the appellant.

18. It is seen that in the M.V.I report, it was mentioned that the driving licence was not produced at the time of inspection. R.W.1 has also deposed to that effect. An assistant of Vadipatti Regional Transport Office has also deposed that the driver of the vehicle was not having valid driving licence. The appellant and the claimant have not taken any steps to produce the driving licence of the driver of the vehicle and hence, it is clear that there was violation of policy conditions.

19. With regard to third party claim, an Insurance policy is presumed to have been transferred to the name of the subsequent purchaser. The Tribunal fixed the liability on the appellant and directed the Insurance Company to pay the claimant and then to recover the same from the appellant. Since the appellant has already admitted the

purchase of the vehicle, the contention of the appellant that the liability has to be fixed on the owner mentioned in the R.C.Book is unreasonable. It is the duty of the appellant to transfer the vehicle in his vehicle, within 15 days from the date of actual transfer. The appellant cannot take advantage of his own fault and hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

20. Hence, this Appeal is dismissed and the cross objection is disposed of. No costs.

(i) The compensation awarded by the Tribunal is hereby confirmed.

(ii) The third respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.2,85,800/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order and the Insurance Company is permitted to recover the same from the appellant herein- owner of the vehicle.

(iii) On such deposit being made by the third respondent herein – Insurance Company, the first respondent herein /claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default.

26.10.2022

Index : Yes/No
Internet : Yes/No
Ls

To

1.The IV Additional Sub Judge,
Motor Accidents Claims Tribunal –
Madurai.

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

R.THARANI.,J.

Ls

Pre-delivery Judgment made in

C.M.A(MD)No.693 of 2018

26.10.2022