IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1103 of 2018
and
C.M.P.Nos.9179 and 9180 of 2018

National Insurance Company Ltd.,
No.722/2D, 2E Chennai Kumbakonam Road,
Gandhi Nagar Post,
Kumbakonam. ... Appellant

Vs.

1. Ramudu Naidu

2. Prabakaran ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the award and decree dated 05.02.2016 made in M.C.O.P.No.9 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Vridhachalam.

For Appellant : Mr.S.Arun Kumar

For R1 and R2 : No appearance
Substituted service(paper publication) effected)

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the Award and decree dated 05.02.2016 passed in M.C.O.P.No.9 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Vridhachalam.

2. Appellant is the Insurance Company. First respondent is the claimant. Second respondent is the owner of the offending vehicle. The first respondent/claimant has filed the claim petition claiming compensation for the injuries sustained by him in a road accident, before the Motor Accidents Claims Tribunal, Cuddalore at Vridhachalam.

3. The case of the claimant is that on 04.08.2010 at about 8.00 pm, when the first respondent/claimant was proceeding to Srimushnam, while crossing Melapuliyankudi on the Srimushnam to Vridhachalam Road, at the time, the second respondent herein was travelling in motor cycle bearing Registration No.PY-01-AY-6755, came in a rash and negligent manner and hit the first respondent/claimant and thereby, the claimant sustained grievous injuries. Hence the claim petition.

4. The main contention of the learned counsel for the appellant/ Insurance Company is that the accident took place on 04.08.2010. On the said date, there was no insurance coverage for the offending vehicle. On the date of accident, the offending vehicle was not insured with the appellant/Insurance company. Hence, there is no contractual liability is pending between the insurer/the appellant Insurance Company and the insured, the second respondent herein.

5. Learned counsel for the appellant/Insurance Company further submitted that the second respondent's vehicle, namely the motor cycle bearing Registration No.PY-01-AY-6755 was not insured with the appellant on the date of accident. The document marked by the first respondent/claimant ie., Ex.P9 -xerox copy of the Insurance Policy, clearly shows that the offending vehicle was insured with the appellant only on 10.08.2010, which is subsequent to the accident, which took place on 04.08.2010 and the policy was issued for the period from 10.08.2010 to 09.08.2011. The previous policy was issued for the

period from 02.04.2009 to 01.04.2010. Neither the previous policy was renewed, nor new policy was obtained at the time of accident. Hence, the appellant is not liable to be pay compensation to the first respondent/claimant.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. The accident is not in dispute. The first respondent sustained injuries due to accident and had taken treatment in the hospital, which is not in dispute. The main contention raised by the appellant/ Insurance Company is that the offending vehicle was not insured with the appellant/Insurance Company at the time of accident and there is no relationship between the appellant/Insurance Company and the second respondent/claimant as insurer and insured at the relevant point of time and hence, the appellant/Insurance Company cannot indemnify the loss caused to the first respondent by the second respondent.

8. Now, the question that has to be answered is that on the date of accident, whether the second respondent's vehicle was insured with the appellant/Insurance Company or not. On a reading of the entire materials, especially Ex.P9-xerox copy of the Insurance Policy, which clearly shows that period of insurance policy was covered from 10.08.2010 to 09.08.2011, whereas, the accident had taken place on 04.08.2010 itself. Hence, on the date of accident, there was no insurance coverage for the second respondent's vehicle. Hence, there is no contractual liability on the date of accident between the appellant/ Insurance company and the second respondent. On a perusal of F.I.R, it is proved that the date of accident is 04.08.2010 and on a perusal of Ex.P9, it is proved that the Insurance Policy was taken only on 10.08.2010, which clearly shows that on the date of accident, the offending vehicle was not insured with the appellant/Insurance company. Hence there is no contractual relationship between the appellant and the second respondent as the insurer and the insured at the time of accident. Therefore, the appellant/Insurance Company is not liable to pay compensation to the first respondent/claimant.

9. Under the facts and circumstances of the case, this Court finds that the Award passed by the Tribunal fixing the liability on the appellant/Insurance Company is perverse. The Award passed by the Tribunal is set aside. Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10. Whatever the amount that has been deposited by the appellant/Insurance Company, the entire amount shall be withdrawn by them.

18.07.2023

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To

1. The III Additional District and Sessions Judge,
   Motor Accidents Claims Tribunal,
   Vridhachalam.

2. The Section Officer,
   VR Section,
   High Court,
   Chennai.

P.VELMURUGAN, J.

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