IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2129 of 2018

The Oriental Insurance Company Limited
No.166, Thambu Chetty Street
Chennai ... Appellant

Vs.

1.Sasikumar

2.Manikandan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree in M.C.O.P.No.240 of 2014, dated 15.04.2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Villupuram.

For Appellant : Mr.R.Prem Chander

For Respondents : Mr.M.Sivakumar for R1
R2-Notice dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Award and decree in M.C.O.P.No.240 of 2014, dated 15.04.2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Villupuram.

2. Before the Tribunal, the appellant/Insurance Company was arrayed as 2nd respondent and the 2nd respondent herein who is the owner of the offending vehicle was arrayed as 1st respondent. The 1st respondent herein is the claimant.

3. The case of the claimant is that, on 03.08.2012 at about 08.30 p.m., when he was walking in the Mitrampattu Sankaraparani River Bridge at the extreme left side of the road, a Crane bearing Regn. No.TN-18-L-5884, which was driven by the driver of the 2nd respondent herein, came on the wrong side from his back in a rash and negligent manner with high speed and dashed against the claimant, due to which, he sustained grievous injuries all over the body.

4. The claimant filed a claim petition in M.C.O.P.No.240 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Villupuram, claiming compensation of Rs.3,00,000/- from the owner and insurer of the offending vehicle/2nd respondent and appellant herein, for the injuries sustained by him, stating that he was an Agriculturist and due to the accident, he sustained injuries in the left thigh and fracture in the hip and therefore, he could not walk and not able to do any work as he did before the accident.

5. In order to substantiate the claim before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 9 documents were marked as Ex.P.1 to Ex.P.9 besides, one material object was exhibited as M.O.1. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 3 documents were marked as Ex.R1 to Ex.R3 besides, 3 Court documents were marked as Ex.C.1 to Ex.C.3.

6. The 2nd respondent herein/1st respondent remained ex-parte before the Tribunal.

7. The Tribunal, after hearing the arguments of the learned counsel for the claimant and the learned counsel for the Insurance Company and considering the materials, partly allowed the claim petition, by Award dated 15.04.2016 and directed the owner and insurer of the offending vehicle/2nd respondent and appellant herein, to jointly and severally pay the Award amount of Rs.1,27,500/- to the claimant, from the date of claim petition, till the date of realization, with interest at 7.5% per annum.

8. Aggrieved by the Award passed by the Tribunal, the Insurance Company has filed the present appeal before this Court.

9. The learned counsel for the appellant/Insurance Company submitted that the date of accident is 03.08.2012, whereas, the Insurance has been taken only on 09.08.2012. Therefore, on the date of accident, there was no insurance for the vehicle of the 2nd respondent and there is no relationship of insurer and insured between the appellant and the owner of vehicle/2nd respondent herein and that there is no privity of contract between them. Since on the date of accident, the offending vehicle was not insured with the appellant/Insurance Company, they are not liable to pay any compensation.

The Tribunal has erroneously held that the premium was deducted from the owner of the offending vehicle by the appellant/Insurance Company and therefore, there was insurance coverage at the time of accident and fixed the liability on the appellant/Insurance Company, which is erroneous.

10. The learned counsel for the 1st respondent/claimant submitted that the Tribunal by considering the materials placed before it, found that the premium was already paid by the owner of the offending vehicle much before the accident and the claimant should not suffer on the ground that the premium was not received by the appellant/Insurance Company and hence, the Tribunal rightly fixed the liability on the owner and insurer of the offending vehicle. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

11. Since the 2nd respondent remained ex-parte before the Tribunal, notice to the 2nd respondent/owner of the offending vehicle, was dispensed with by this Court by order dated 20.06.2023.

12. Heard the learned counsel for the appellant and learned counsel for the 1st respondent and perused the entire materials available on record.

13. The accident is not in dispute. The manner of accident is not in dispute. The liability of the driver of the offending vehicle is also not in dispute. The only stand taken by the appellant/Insurance Company is that, on the date of accident, the offending vehicle was not insured with them and therefore, they are not liable to pay any compensation.

14. A perusal of the entire materials clearly shows that the offending vehicle is a newly purchased vehicle. The owner of the vehicle/2nd respondent herein has purchased the said vehicle through hypothecation and it was registered on 04.07.2012 itself which is much earlier to the date of accident (03.08.2012).

15. Admittedly, insurance has to be taken compulsorily for all the vehicles. In this case, admittedly, the offending vehicle was a newly purchased one and the same was also hypothecated. The owner of the

vehicle/2nd respondent herein, has taken insurance for the offending vehicle. The materials show that the premium for the insurance was also received from the original owner of the vehicle/2nd respondent herein and the same was also hypothecated. Admittedly, at the time of purchasing a new vehicle, the Insurance companies are not getting the insurance premium directly from the registered owner of the vehicle. They are receiving the premium at the 1st instance for the new vehicle either from the financier or from the Dealer of the Show Room. This is one of the cases where the vehicle was purchased by raising funds from a private financier and hypothecated and registered even on 04.07.2012 itself and the premium was also received from the registered owner of the vehicle/2nd respondent.

16. Therefore, once the premium was paid by the owner of the vehicle, then it is for the agent/dealer who received the amount to remit the same to the insurer. There is no contra evidence to show that there is no understanding between the agent/dealer and the insurance company and that they are getting premium for the new vehicles directly from the registered owner of the vehicle. The owner of the vehicle/2nd respondent herein, bona-fidely believing that the amount for insurance premium was already remitted

and the same was shown as loan and he was under the impression that the vehicle was insured with the appellant/Insurance Company. Under these circumstances, this Court finds that there is no perversity in the appreciation of evidence by the Tribunal. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

17. In view of the above discussions, the appellant/Insurance Company is directed to pay the compensation awarded by the Tribunal. If the appellant/Insurance Company finds that the agent/dealer/financier who received the premium from the owner of the vehicle/2nd respondent herein had not remitted the amount to them, the appellant/Insurance Company is at liberty to recover the same from them in the manner known to law.

18. With the above observations, this Civil Miscellaneous Appeal is dismissed. No Costs.

04.08.2023

ksa-2
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal
(Special Subordinate Judge No.II)
Villupuram.

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

P.VELMURUGAN. J.

ksa-2

C.M.A. No.2129 of 2018

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