IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2023

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The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.1369 of 2022
and C.M.P.No.9920 of 2022

Sriram General Insurance Co. Ltd.,
5F, Sachin Plaza, Reddiyar Block No.1,
Shriram Nagar, Azhagapuram,
Salem District.

...Appellant

Versus

1.Natesan
2.Sakthivel
3.Manager,
Saveri Transport Finance Ltd.,
Salem KAK Complex, First Floor,
Trichy Main Road, Opposite to Axis Bank,
Gugai, Salem.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the award dated 03.12.2021 made in M.C.O.P.No.2357 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court – 2, Salem.

For Appellant	:	Mr.S.Dhakshnamoorthy
For Respondent – 1	:	Mr.S.Kaviarasu
For Respondents – 2 & 3	:	No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company seeking to set aside the award passed by the Motor Accident Claims Tribunal, Special Sub Court – 2, Salem in M.C.O.P.No.2357 of 2015 dated 03.12.2021.

2. The brief facts of the case are as follows:

On 26.07.2015 at 9.10 a.m., when the 1st respondent got down from the bus at Pillukadai Bus Stop, Dadagapatty, Salem Trichy Main Road and crossing the road from West to East direction, a motorcycle bearing Registration No.TN 23 BW 9211 driven by its rider came from North to South direction dashed against the 1st respondent and thereby, the accident had occurred. In the said accident, the 1st respondent fell down in the road and sustained grievous injuries. Hence, immediately, the injured 1st respondent was taken to Government Mohan Kumaramangalam Hospital, Salem where he was given first aid. Thereafter, he was shifted to Surya Hospital, Rasipuram for treatment where he was admitted as an inpatient and he was given treatment for 21 days. Due to the injuries sustained by the 1st respondent, he suffered from permanent disability. Aggrieved over the same, the 1st respondent had filed a claim petition in M.C.O.P.No.2357 of

2015 against the 2nd respondent (owner of the offending vehicle), appellant/Insurance Company (insurer of the offending vehicle) and 3rd respondent (Finance Company), claiming a sum of Rs.7,00,000/- as compensation.

3. The appellant/Insurance Company (insurer of the offending vehicle), 2nd respondent (owner of the offending vehicle) and 3rd respondent (Finance Company) had filed their respective counter statement denying all the averments made by the 1st respondent/claimant in the claim petition.

4. The appellant/Insurance Company had stated in its counter statement that the driver who rode the 2nd respondent's motorcycle was not holding a valid driving license at the time of accident, despite which, the 2nd respondent had handed over the motorcycle to him and thereby, the 2nd respondent had willfully violated the policy conditions and Motor Vehicles Act; the offending vehicle was not insured with the appellant/Insurance Company at the time of accident; further, the 2nd respondent has not taken policy from the appellant/Insurance Company for his motorcycle; the 1st respondent/claimant who crossed the road without caring the road traffic is solely responsible to the accident and hence, this claim petition is liable to

be dismissed.

5. In the counter statement filed by the 2nd respondent, it is stated that the 1st respondent/claimant is solely responsible to the accident occurred; the driver who rode the 2nd respondent's motorcycle was having a valid driving license at the time of accident; further, the 2nd respondent's motorcycle was insured with the appellant/Insurance Company and hence, the appellant/Insurance Company is liable to pay the compensation to the 1st respondent/claimant.

6. Similarly, the 3rd respondent had also stated in its counter statement that being the insurer of the 2nd respondent's motorcycle, the appellant/Insurance Company is liable to pay the compensation to the 1st respondent/claimant.

7. Before the Tribunal, on the side of the claimant, the 1st respondent/claimant examined himself as P.W.1 and marked 13 documents as Exs.P1 to P13. On the side of the respondents, three witnesses were examined viz., R.W.1, R.W.2 & R.W.3 and 9 documents were marked as Exs.R1 to R9. One Court document viz., Disability Certificate issued by the

Medical Board was marked as Ex.C1.

8. On appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the rider who rode the 2nd respondent's motorcycle and being the insurer of the 2nd respondent's motorcycle, appellant/Insurance Company is liable to pay compensation to the injured 1st respondent/claimant. Accordingly, it directed the appellant/Insurance Company to pay the compensation of Rs.2,10,736/- with interest at 7.5% per annum from the date of filing of the petition till the date of realization, to the 1st respondent/claimant.

9. Aggrieved over the award passed by the Tribunal, the appellant/Insurance Company has preferred this appeal before this Court.

10. Mr.S.Dhakshanamoorthy, learned counsel for the appellant/Insurance Company submitted that admittedly, the Policy Cover Note was issued to the 2nd respondent's motorcycle only on 27.07.2015, whereas, the accident took place on 26.07.2015 i.e., a day before the issuance of Policy Cover Note; the 1st respondent/claimant had marked a Xerox Copy of the Policy Cover Note as Ex.P3 before the Tribunal and the

said Policy Cover Note does not bear the signature of the Officials of appellant/Insurance Company.

11.1. The learned counsel contended that the premium ought to have been Rs.554/-, however, the premium quoted in Ex.P3 (Xerox Copy of Policy Cover Note) was Rs.464/- which is contrary to the regulations of Insurance Regulatory and Development Authority (IRDA) which came into force from 01.04.2016; and that this itself clearly shows that the said Policy Cover Note was not issued by the appellant/Insurance Company. He also contended that the said Policy Cover Note could have been prepared by the Finance Company in connivance with the injured 1st respondent/claimant, but, without analysing the truth, the Tribunal had held in its findings that the Ex.P3 (Policy Cover Note) was issued by the appellant/Insurance Company.

11.2. Further, the learned counsel submitted that in this case, the original Policy Cover Note was not produced before the Tribunal and the findings of the Tribunal which is based on the Xerox Copy of Policy Cover Note suffers from several infirmities and hence, the findings of the Tribunal with regard to the validity of Policy Cover Note is liable to be set aside. He also fairly submitted that the appellant/Insurance has not challenged the quantum of compensation awarded by the Tribunal.

12. *Per Contra,* Mr.S.Kaviarasu, learned counsel appearing for the 1st respondent/claimant submitted that this is the case, where, the injured claimant himself had produced the Policy Cover Note before the Tribunal and proved the existence of the same; and brought the Finance Company as a party to the proceedings to establish the fact that the Policy Cover Note was issued by the insurer (appellant/Insurance Company). He further submitted that before the Tribunal, the appellant/Insurance Company did not let in any evidence contrary to the evidence let in on the side of 1st respondent/claimant and 3rd respondent/Finance Company and hence, the Tribunal had rightly fixed the liability on the appellant/Insurance Company. Therefore, the learned counsel prayed for dismissal of this appeal.

13. Though notice has been served on the respondents 2 & 3, none appeared on their behalf.

14. Heard the learned counsel for appellant/Insurance Company and the learned counsel appearing for 1st respondent/claimant and perused the materials available on record.

15. The only short question involved in this appeal is that whether the Tribunal was right in holding that the appellant/Insurance Company had issued the Policy Cover Note to 2nd respondent's motorcycle?

16. From a perusal of the materials on record, it is evident that before the Tribunal, on the side of the claimant, 1st respondent/claimant examined himself as P.W.1 & marked 13 documents as Exs.P1 to P13 and on the side of the respondents, 3 witnesses were examined viz.,

(i) Visithra, Legal Manager of appellant/Insurance Company was examined as R.W.1;

(ii) 2nd respondent examined himself as R.W.2; and

(iii) Raji, Manager of 3rd respondent Finance Company was examined as R.W.3

and 9 documents were marked as Exs.R1 to R9.

17. It is to be noted that Ex.P3 (Xerox Copy of Policy Cover Note) marked on behalf of the 1st respondent/claimant does not bear the signature of the Officials of the appellant/Insurance Company. As per the regulations of IRDA, the premium ought to have been Rs.554/- for an insured vehicle,

but, in the present case, the premium collected under the said Policy Cover Note is Rs.464/-. The case of the appellant/Insurance Company is that the said Policy Cover Note was not issued by their company and hence, the Tribunal ought not to have fastened the liability on the appellant/Insurance Company by holding that the appellant/Insurance Company had issued the said Policy Cover Note to the 2nd respondent's motorcycle and the same was valid at the time of accident.

18. In this case, the appellant/Insurance Company had not produced the details of Policy Cover Note before the Tribunal to substantiate their claim. Further, during the cross-examination of R.W.1 (Visithra, Legal Manager of appellant/Insurance Company), she admitted that in the counter statement filed by the appellant/Insurance Company, it was only stated that the 2nd respondent's motorcycle was not insured with the appellant/Insurance Company at the time of accident and it was not stated that the Policy Cover Note was duplicate. Though the appellant/Insurance Company had stated that the Policy Cover Note was not issued by their company, it did not produce any evidence before the Tribunal to establish that Ex.P3 (Policy Cover Note) was not issued by their company and that it was fake. Hence, the Tribunal had fastened the liability on the appellant/Insurance Company.

19. Considering the above facts and circumstances of the case and also, taking note of the evidences let in by the parties before the Tribunal, this Court is of the opinion that the finding of the Tribunal with regard to fixation of liability on the appellant/Insurance Company does not warrant interference by this Court.

20. However, taking note of the fact that Ex.P3 (Xerox Copy of Policy Cover Note) does not bear the signature of the Officials of appellant/Insurance Company and also, there is a discrepancy with regard to premium collected at the time of issuance of Policy, this Court is of the opinion that it would be just and appropriate to afford an opportunity to the appellant/Insurance Company to independently establish that the Policy Cover Note was not issued by them. Hence, this Court grants liberty to the appellant/Insurance Company to file a suit before the competent Civil Court, against the 3rd respondent (Finance Company).

21. It is made clear that the 1st respondent/claimant is entitled to get the compensation awarded by the Tribunal. The appellant/Insurance Company shall deposit the compensation amount of Rs.2,10,736/- as

awarded by the Tribunal, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.C.O.P.No.2357 of 2015, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent/claimant shall withdraw the said amount.

22. In the result, this Civil Miscellaneous Appeal is partly allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

04.08.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Motor Accident Claims Tribunal,
Special Sub Court – 2, Salem.

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.

SUNDER MOHAN, J.

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