IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1708 of 2020
and
C.M.P.No.12573 of 2020

The Divisional Manager,
M/s.The TATA AIG General Insurance Company Limited,
'Samson Towers' II Floor,
No.403-L, Pantheon Road,
Egmore, Chennai – 600 008. ... Appellant

Vs.

Ganesan (died)

1.Dhanamani
2.Senthilraja ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 09th March, 2020, passed in M.C.O.P.No.40 of 2017, by the Motor Accidents Claims Tribunal, (Principal Subordinate Court), at Vridhachalam.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance [R1]
Mr.L.Palanimuthu [R2]

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JUDGEMENT

Challenging the award and decree passed by the Motor Accidents Claims Tribunal, (Principal Subordinate Court), at Vridhachalam in M.C.O.P.No.40 of 2017, dated 09.03.2020, the insurance company has filed the present appeal.

2. As per the claim petition, on 09.02.2016 at about 9.30 a.m., when the claimant was riding his vehicle bearing Reg.No.TN-31-AV-8527, the vehicle belonging to the first respondent insured with the second respondent/insurance company bearing Reg.No.TN-31-BV-1163 driven by its driver in a rash and negligent manner, dashed against the two-wheeler, resulting in grievous injuries sustained by the claimant, for which, the claimant had filed a claim petition claiming a compensation of Rs.10,00,000/- before the Tribunal.

3. Before the Tribunal, the claimant examined one witness viz., P.W.1 and marked 8 documents viz., Ex.P.1 to Ex.P.8. No witnesses were examined nor any documents were marked on the side of the second respondent/insurance company. After adjudication, the Tribunal by its

award dated 09.03.2020 awarded compensation in a sum of Rs.94,810/- with an interest of 7.5% p.a., by ordering pay and recovery. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, at the relevant point of time, on 09.02.2010, there was no valid policy issued by the appellant and the policy has came to be issued subsequently on 12.21 hours and therefore, the accident having occurred proceeding the issuance of the policy, the appellant is not liable to pay compensation. It is the further submission of the learned counsel that the driver of the second respondent was not possessed of a valid driving licence to drive the heavy duty motor vehicle and the said fact having been proved through Ex.P.4, however, without appreciating the same, the Tribunal had directed the appellant to pay the compensation and thereafter, recover the same from the owner of the vehicle/second respondent, which is erroneous and therefore, the award deserves to be interfered with.

5. Per contra, the learned counsel appearing for the second respondent/claimant submitted that, by considering all the materials on records, the Tribunal has awarded compensation in favour of the claimant under various heads, which are just and reasonable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and also perused the materials available on record.

7. A perusal of the materials available on records reveals that the policy/Ex.P.3, has been covering the vehicle from 09.02.2016 to 08.02.2017. The Tribunal has held that, at the time of accident, the vehicle was fully covered. A perusal of the policy/Ex.P.3 reveals that the coverage is for the aforesaid period and it is not spelt out that the coverage will start only after 12.21 hours on 09.02.2016. That being the case, the validity of the policy cannot be questioned and the vehicle of the second respondent was having a valid policy at that particular time and therefore, the appellant is not liable to compensate the claimant. However, Ex.P.4 is

Motor Vehicle Inspector's report, which shows that the vehicle of the second respondent was fit and it was duly insured with the appellant. However, through Ex.P.4, it is evidenced that the driver of the second respondent was not possessed of a driving licence to drive the heavy duty motor vehicle. Such a driving licence was also not produced by the second respondent, when the second respondent has permitted his driver to drive the vehicle, which requires possession of heavy duty motor vehicle licence and in the absence of said licence being placed before the Tribunal, the Tribunal has rightly passed the order absolving the liability of the insurer to pay compensation. However, considering the benevolent nature of the MV Act has directed the appellant/insurer to first pay the compensation to the claimant and thereafter, to recover the same from the second respondent/owner of the vehicle. The said order passed by the Tribunal is based on the ratio laid down by this Court and the Apex Court in a catena of decisions, which cannot be said to be perverse or unreasonable and therefore, the order passed by the Tribunal deserves to be sustained.

8. Accordingly, the civil miscellaneous appeal is dismissed and the decree and judgment passed by the Motor Accidents Claims Tribunal,

(Principal Subordinate Court) at Vridhachalam in M.C.O.P.No.40 of 2017 dated 09.03.2020 is confirmed. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.40 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of two (2) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal, (Principal Subordinate Court), at Vridhachalam.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.,

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