IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3309 of 2014
and
MP.No.1 of 2014

The Oriental Insurance Company Ltd.,
Shoba TSM Complex,
Railway Station Road
Palakkadu-678 001
Kerala State. ... Appellant

..Vs..

1. P.Subramani
2. R.Natarajan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 30.04.2014 made in MCOP.No.152 of 2009 on the file of the Motor Accidents Claims Tribunal/ Sub Judge, Mettur.

For Appellant : Mr.K.Vinod

For Respondents : Mr.R.Nalliyappan for R1

JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 30.04.2014 passed by the Motor Accident Claims Tribunal/ Sub Judge, Mettur, in MCOP.No.152 of 2009.

2. The case of the appellant, in brief, is as follows:

On 28.09.2008 at 7.30 p.m, when the claimant was proceeding in his TVS Moped at Kaveripuiram Bridge, Kolathur, Mettur, the driver of the vehicle namely TATA Ace bearing Registration No.TN-36-K-7048 belonging to the 2nd respondent herein, came in a rash and negligent manner and hit against the claimant. Due to the accident, the claimant sustained grievous injuries. Claiming compensation of Rs.20,00,000/, the claimant filed a claim petition in MCOP No.152 of 2009 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,60,950/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The Appellant / Insurance Company, unsatisfied with the liability fastened on them under the impugned award, has preferred this appeal seeking to set aside the award of the Tribunal.

4. The learned counsel for the Appellant would submit that it is settled law that when there is no insurance coverage for the vehicle on the date of the accident, the Insurance Company cannot be made liable to pay the compensation. He drew the attention of this Court to the oral evidence adduced by RW2, the official of the Appellant / Insurance Company and Ex.R3 – the insurance policy of the subject vehicle which was involved in the accident. He submitted that the accident happened on 28.09.2008, but as per Ex.R3, insurance policy, the insurance coverage for the subject vehicle is only for the period between 01.04.2007 to 31.03.2008. Therefore, he would contend that the Tribunal has erroneously mulcted the liability on the Appellant and has also erroneously granted pay and recovery rights under the impugned Award.

5. The learned counsel for the 1st respondent has submitted that the

Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not require any interference in the hands of this Court. Hence, he prays for dismissal of the Appeal.

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

7. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

8. A perusal of counter filed by the appellant would reveal that the accident occurred due to the rash and negligent driving of the driver of the TATA Ace. Admittedly, the claimant in his claim petition as found in column – 16 have disclosed only the name of the Insurance Company but have not disclosed the full insurance particulars like policy number, period of insurance etc. The claimant has also not adduced any evidence before the

Tribunal with regard to the steps he had taken to obtain the full insurance particulars of the subject vehicle which was involved in the accident. It has also been the consistent stand of the Appellant / Insurance Company before the Tribunal as seen from their counter statement as well as from their oral and documentary evidence that the subject vehicle did not have insurance coverage on the date of the accident i.e., on 28.09.2008 and the insurance policy was issued only subsequently which gives coverage to the subject vehicle only for the period from 14.10.2008 to 13.10.2009 i.e., for the period after the accident. The Appellant / Insurance Company has also filed the insurance policy (Ex.R3), which confirms the contention of the Appellant that on the date of the accident, there was no insurance coverage for the subject vehicle. The evidence adduced by RW2, an official of the Appellant / Insurance Company also supports the contention of the Appellant / Insurance Company and there is no contradiction whatsoever.

9. In support of their contention, the appellant has relied on the following decisions:

(i) The Oriental Insurance Co.Ltd., Vs. R. Mahendran and

Others – CMA.No.2484 of 2010 dated 14.09.2016 (MANU/TN/3221/2016) in which it is held that unless the policy details are furnished to the insurer by the claimant, it is impossible for the insurer to produce the policy before the Tribunal. Before saddling the Insurance Company with the liability, initial burden lies upon the claimant to show that the vehicle was insured with the particular Insurance Company and the same cannot be faulted for non- production of the policy.

(ii) The Branch Manager, The Oriental Insurance Co. Ltd., Thiruvarur Town and Munsif Vs. Karthikesan and others - CMA.No.893 of 2002 dated 21.07.2007- 2007 (2) TN Mac 188, in which, it has been stated that before the Tribunal, no steps were taken by the claimant to establish that the tractor was duly covered with the appellant / Insurance Company. It is also held that when the claimant has failed to establish that the Insurance Policy was in force at the time of accident, no liability could be fixed upon the Insurance Company and the owner of the vehicle should be held liable.

10. Placing reliance on the above citations, this Court is of the

opinion that the owner of the TATA Ace/lorry has to pay the compensation to the claimant and hence the appellant / Insurance Company is exonerated from the liability. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of liability alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

11. In the result,

(i) This Civil Miscellaneous Appeal is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) The appellant/Insurance Company is permitted to withdraw the amount deposited by them, if any before the Tribunal.

(iii) The 2nd respondent/owner of the vehicle is directed to deposit the Award amount together with interest and costs from the date of claim till the date of deposit as assessed by the Tribunal, to the credit of MCOP.No.152 of 2009, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter.

13.06.2023

Index:Yes/No
Internet:Yes/No
uma

To

1.The Motor Accidents Claims Tribunal
Subordinate Judge, Mettur.

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

A.A.NAKKIRAN, J.

uma

C.M.A.No.3309 of 2014
and M.P.No.1 of 2014

13.06.2023