IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2023

PRONOUNCED ON : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

**C.M.A.No.3182 of 2019**

N.Naresh ... Appellant

vs.

1.Mr.V.Parthiban

2.Bharti AXA General Insurance Company Limited,
Rep.by its Regional Manager,
Office at 1st Floor,
Ferns Icon,
Survey No.28,
Doddanakundi,
Bangalore-560 037. ... Respondents

**PRAYER**: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against judgment and decree dated 01.04.2019 in M.C.O.P.No.282 of 2015, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore.

For Appellant : Mr.Satheesh Kumar

For Respondents : Ms.I.Divya
for Mr.M.Jayaraj [R2]
R1 - Exparte

**JUDGMENT**

The Civil Miscellaneous Appeal is focused against the judgment and decree dated 01.04.2019 passed in M.C.O.P.No.282 of 2015, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore.

2. Claim petition was filed under Section 166 of Motor Vehicles Act 1988, claiming compensation of Rs.2,00,000/- for the injury sustained by the appellant in a motor accident that occurred on 28.06.2014.

3. The Tribunal after hearing both sides arguments and upon considering oral and documentary evidence, has granted compensation of Rs.25,000/-, fastening the liability on the 1st respondent alone. Against which the present appeal is filed by the claimant questioning the liability as well as quantum.

4. The learned counsel appearing for the appellant/claimant would vehemently argue that the date of the accident is 28.06.2014 and the insurance policy was in force and the period covered is 09.06.2014 to 08.06.2015. It is his argument that though the insurance policy was in force, the 1st respondent was directed to pay compensation is incorrect. He would further contend that the amounts awarded for loss of earning,

Medical Expenses, Transportation, Pain and Sufferings and for Nutrition are less.

5.Among other specific contention of the 2nd respondent/Insurance Company is that the offending vehicle was not registered and thereby violated the policy conditions and hence forth, the Insurance Company is not liable to pay compensation.

6. Heard the arguments of learned counsel for both sides and perused the materials on record.

7. To substantiate the claim, the claimant has examined himself as PW1 and Exs.P1 to P11 have been marked. On the side of the Insurance Company, RW1 and RW2 have been examined and Exs.R1 to R3 have been marked.

8. It is the evidence of PW1 that on 28.06.2014 at about 11.10 a.m., while the petitioner was travelling in a cycle along with his nephew from Nallapalayam pattiyur bus stand at that time, an unregistered Honda Unicorn two wheeler came from the eastern side in a rash and negligent

manner and hit against him and he suffered lacerated injuries, is not in dispute.

9. The date of accident is 28.06.2014. The policy was alive at the relevant point of time. The claimant himself states that he was hit by a unregistered motor vehicle. The pivot point is that whether the Insurance Company is permitted to take such a defence or not is to be seen. In this regard, Section 149 of the Motor Vehicles Act, 1988 which deals with the conditions where the insurer is not liable to pay compensation to satisfy the award. Section 149 of Motor Vehicles Act is extracted hereunder:

> *149. Settlement by insurance company and procedure therefor.-*
> *(1)The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident.*
> *(2)An officer designated by the insurance company for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government.*

*(3) If, the claimant to whom the offer is made under sub-section (2),-*

*(a) accepts such offer,-*

*(i) the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and*

*(ii) the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;*

*(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.*

10. A close perusal of Section 149 gives a clear picture that as enumerated therein alone the Insurer is permitted to take defence. The ground of non-registration of vehicle is not found in Section 149 of Motor Vehicles Act. Therefore, the insurer is totally not permitted to take such a defence.

11. With regard to these details one has to refer to Section 39 of Motor Vehicles Act. Section 39 of Motor Vehicles Act is extracted hereunder:

*"39. Necessity for registration.- No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is*

*registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:*

*Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.*

*Corresponding Law.- Section 39 corresponds to section 22 of the Motor Vehicles Act, 1939.*

*Objects and Reasons.- Clause 39 prohibits the driving of a motor vehicle in any public place or in any other place without registering it under the provisions of this Chapter. It also empowers the State Government to prescribe conditions subject to which the provisions of this clause will not apply to the motor vehicles in possession of dealers."*

12. If a person drives a vehicle without registration, it is an offence punishable under Section 192 of the Motor Vehicles Act. Therefore, as enumerated above, non-registration of the vehicle cannot be termed as a breach of policy condition at all. More so, the ground is not available for the insurer as per Section 149 of Motor Vehicles Act, 1988.

13. The insurance is a form of contract, where the insurer and the insured are governed by the terms of the contract.

14. Therefore, based on catena of decisions, it is vividly made clear that the insurer is not permitted to take such a defence as per Section 149 of Motor Vehicles Act, 1988. Eventually as per the terms of the contract, the insurer is liable to pay compensation.

15. It is the evidence of PW1 that due to the accident, he sustained aberration, measuring 1 X 0.5 cm. It could be seen from Ex.P2 accident register copy, that the claimant has sustained laceration only. Based on the same, the Tribunal has granted Rs.25,000/- as compensation. As regards loss of income during treatment period as he has sustained only laceration, he is not entitled to claim loss of income.

16. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) In respect of enhancement, appeal stands dismissed. The compensation of Rs.25,000/- awarded by the Tribunal is confirmed.

(iii) **The owner of the erred vehicle and its insurer are jointly**

**and severally liable to pay compensation.** The 2nd respondent / Insurance Company is directed to deposit the compensation amount awarded by the Tribunal i.e., **Rs.25,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.282 of 2015, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Vellore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law.

31.07.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

**R.KALAIMATHI, J.,**

ssn

To:

1. The Motor Accident Claims Tribunal,
   Chief Judicial Magistrate, Vellore.

2. The Section Officer,

V.R.Section,
High Court of Madras,
Chennai.

**C.M.A.No.3182 of 2019**

**31.07.2023**