IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

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

C.M.A.No.4081 of 2019
and
C.M.P.No.23047 of 2019

The Divisional Manager,
The New India Assurance Co. Ltd.,
45, Moore Street, Chennai – 1,
Branch at: No.86, Arcot Road,
Porur, Chennai – 116. ... Appellant

Vs.

1.G.Mathivanan

2.K.Dinesh Babu ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgement and decree passed in M.C.O.P.No.462 of 2014 on 03.06.2019 on the file of the learned Motor Accident Claims Tribunal (III Additional District Court) Tiruvallur at Poonamallee.

For Appellant : Mr.J.Chandran

For Respondents : Mr.K.Varadha Kamaraj [R1]
Not Ready in Notice [R2]

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JUDGMENT

Challenging the judgement and decree dated 03.06.2019 made in M.C.O.P.No.462 of 2014 on the file of Motor Accident Claims Tribunal (III Additional District Court) Tiruvallur at Poonamallee, the insurance company has filed this appeal.

2. On 17.05.2014 at about 21.45 hours, when the claimant was walking on the road, the motorcycle bearing Reg.No.TN 85 3013, which was insured with the second respondent/insurance company, driven by the first respondent in a rash and negligent manner, dashed against the claimant, resulting in the claimant sustaining grievous injuries including fracture, for which, the claimant was hospitalized and taken treatment. Therefore, the claimant filed a claim petition before the Tribunal claiming a compensation of Rs.3,00,000/-.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked 7 documents viz., Ex.P.1 to Ex.P.7. On the side of the respondents, they have examined one witness viz., R.W.1 and marked one document viz., Ex.R.1. The Disability Certificate issued by District Medical Board,

Tiruvallur was marked Ex.X.1. After adjudication, the Tribunal awarded a sum of Rs.1,38,000/- as compensation and directed the second respondent/insurance company, who is the appellant herein, to pay the compensation. Aggrieved by the same, the appellant/insurance company has filed the present appeal.

4. The learned counsel appearing for the appellant submitted that the policy/Ex.P.3 which is the basis for the Tribunal granting the compensation is a fake policy and it has not at all been issued by the appellant, which fact has been clearly deposed by R.W.1 as well as the enquiry report/Ex.R.1. But merely the Tribunal has brushed aside the said evidence by stating that no complaint has been lodged before the police with regard to the fake policy and therefore, the policy has not been proved to be a fake one in accordance with law, cannot be sustained and accordingly, the Tribunal has granted compensation, which is erroneous. Further, the compensation under various heads are excessive and therefore, the same requires interference.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that, without proving through any material

that the policy is a fake one and inspite of coming to know that the policy is alleged to be a fake one, no police complaint having been lodged, the Tribunal has rightly directed the appellant/insurance company to pay the compensation, which does not require any interference.

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

7. The only ground on which the appellant attacks the award passed by the Tribunal is that Ex.P.3/insurance policy is alleged to be a fake one and therefore, no liability devolves on the appellant to compensate the claimant. To substantiate the aforesaid contention, reliance is placed on the evidence of R.W.1/The Assistant Manager of the Insurance Company and the enquiry report/Ex.R.1 to show that the policy is a fake one. R.W.1 has categorically deposed that, no such policy has been issued by the appellant and during the course of investigation, the investigator has arrived at a material to the effect that such a policy was not issued, which is referenced in Ex.R.1. The Tribunal has rejected the said evidence on the ground that,

no police complaint has been lodged by the appellant with regard to the fake policy.

8. It is to be pointed out that the policy being a fake one had come to the knowledge of the appellant only in the course of the claim petition before the Tribunal. Therefore, the Tribunal cannot fasten the liability on the appellant/insurance company to say that merely because no complaint has been filed before the law enforcing agency with regard to the fake policy, the policy cannot be said to be fake. The said finding recorded by the Tribunal is erroneous. In this regard, the second respondent/owner of the vehicle has not gone into the box to claim that the policy is a genuine one. Even after the appellant has deposed that the policy is a fake one, the second respondent/owner of the vehicle has not taken any steps to disprove the same. In the absence of any contra evidence from the owner of the vehicle with regard to the allegation of fakeness of the policy, the stand taken by the appellant cannot be brushed aside merely on the ground that no police complaint has been lodged. Therefore, the finding with regard to Ex.P.3 requires to be set aside. Once this Court sets aside Ex.P.3/insurance policy as one being fake, no liability will devolve on the appellant to pay

the compensation and it will be the duty of the second respondent/owner of the vehicle to pay the compensation to the claimant.

9. For the reasons aforesaid, the civil miscellaneous appeal is allowed and the award passed by the Tribunal in M.C.O.P.No.462 of 2014 dated 03.06.2019, insofar as directing the appellant to pay the compensation is set aside. However, liberty is granted to the first respondent/claimant to proceed in accordance with law to recover the compensation awarded by the Tribunal from the second respondent, who is the owner of the vehicle, in the manner known to law. If any amount deposited by the appellant/Insurance Company before the Tribunal, the Insurance Company is permitted to withdraw the same by making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

29.11.2023

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

1.The Motor Accident Claims Tribunal,
(III Additional District Court),
Tiruvallur at Poonamallee.

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

M.DHANDAPANI, J.,

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