IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

PRONOUNCED ON : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.190 of 2023
and CMP No.1588 of 2023

M/s.IFFCO-TOKIO General
Insurance Company Limited,
Rep. By its Manager,
No.16-3-519, Ashok Nagar,
Backside of S.B.H.Kolar,
Karnataka State,
Pincode-554 083 .. Appellant/2nd respondent

Vs.

1. Amutha .. 1st respondent/petitioner
2. S.K.Malik Basha .. 2nd Respondent/1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.10.2020 passed in MCOP No.7 of 2017 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.S.Murugan (for R1)

JUDGMENT

The Insurance Company has challenged the award dated 16.10.2020 passed in MCOP No.7 of 2017 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Krishnagiri, on the point of liability and quantum.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

3. On the point of liability both the parties are heard.

4. Before the claims tribunal, in the counter statement, the Insurance company has raised a specific plea that the vehicle was not insured with the Insurance company and during the trial, they have specifically challenged Ex.P3, copy of the Insurance Policy marked by PW1.

5. In this connection, the staff of the Insurance Company has examined himself as RW1 and marked Ex.R1 to R9. Ex.R1 is the policy copy of the offending vehicle from 08.08.2015 to 07.08.2016, while Ex.R2 is the policy relating to the period 08.08.2016 to 07.08.2017.

6. The Insurance company has also issued notice to the owner of the vehicle under Ex.R3 to produce the original insurance copy viz., original of Ex.P3, if it is in possession and absolutely, there is no reply to that effect. Complaint was also made to the Deputy Superintendent of Police under Ex.R6 and the acknowledgement is marked as Ex.R7. Notice sent to the owner of the vehicle is Ex.R8.

7. Ex.P3-copy of the insurance policy marked through PW1 is termed as 'pick up van' and period of policy is 03.09.2015 to 02.09.2016. The date of accident is 21.07.2016. The claim petitioner relied upon Ex.P3-Insurance policy, while the Insurance company relied upon Ex.R1-Insurance policy copy. On perusal of Ex.P3 and Ex.R1, I find that Ex.P3 is for Mahendra Bolero pick up van and the same is manipulated from Ex.R1,

which is shown as Bajaj Platina 100CC.

8. Perusal of Ex.R1-Insurance copy, which was filed before the trial Court would clearly demonstrate that it is the original copy from which a fake policy was created, i.e. Ex.P3. The trial Court has rightly come to the conclusion that Ex.P3, is a fake Insurance policy. However, proceeded to hold that the insurance company should have taken steps to prevent such a fake policy being in circulation and accordingly, held that the insurance company is liable to pay the compensation on the principles of joint and several liability.

9. (a) This Court is unable to affix the seal of approval for the said finding for more than one reason. When, the document that was produced by the claim petitioner is found to be fake and a finding is rendered to that effect, no legal obligation or legal liability can arise from any forged document. Consequently, the insurance company cannot be held jointly and severally liable to pay the compensation.

(b) It is the rudimentary principle of law that the Contract of

Insurance is a special contract and a Certificate of Insurance of a vehicle is a *prima facie* evidence of vehicle's ownership and custody and indicative of the contract said to have been entered between the owner of the vehicle with the Insurance company, though the said Certificate of Insurance is lightly less than any probative value as compared to Registration Certificate. The Certificate of Insurance as defined under clause (b) of Section 145 and sub-section 3 of Section 147 of the Motor Vehicles Act, 1988, has to be satisfied as to its genuineness, failing which, no legal obligation can arise therefor. Consequently, when the document/insurance policy, is found to be forged, neither can there arise a legal liability nor a legal obligation from such forged document.

(c) Hence, I have no hesitation to hold that the Insurance company is not liable to pay any compensation. A contra finding rendered by the claims tribunal, is erroneous in law and the same is unsustainable and impermissible and accordingly, the said finding is hereby vacated. Consequently, the appellant Insurance company is exonerated from any liability. A similar view was taken by me in CMA No.3425 of 2014 dated 14.02.2023.

10. On the point of quantum, after perusing the compensation awarded by the claims tribunal on different headings, I find that they are just and reasonable and accordingly, the quantum of compensation arrived at by the tribunal is hereby confirmed.

11. In the result, it is ordered as follows:

(i) The judgment and decree dated 16.10.2020, made in MCOP No.7 of 2017 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Krishnagiri, stands modified.

(ii) The appellant Insurance company is exonerated from liability.

(iii) The owner of the vehicle/2nd respondent herein, alone is liable to pay the compensation awarded by the Claims Tribunal to the claim petitioner/ 1st respondent herein.

(iv) The Claim Petitioner/1st respondent herein has to proceed against the owner of the vehicle in the manner known to law.

(v) The compensation amount and the rate of interest awarded by the claims tribunal remains unaltered.

12. With the above directions, the Civil Miscellaneous Appeal stands allowed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

18.04.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
ars

To

The Special Subordinate Court,
Motor Accident Claims Tribunal, Krishnagiri.

RMT.TEEKAA RAMAN,J.,

ars

Pre-delivery Judgment in
CMA No.190 of 2023

18.04.2023