IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

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

C.M.A.No.1121 of 2019

V.S.T. Motors Limited,
Rep. By its Dy. General Manager,
Meyyanur, Azaghpuram,
Salem – 636 004 ...Appellant

Vs.

1. New India Assurance Co. Ltd.,
Srivari Shopping Mall, 2nd Floor,
2/91, New Bus Stop Road, Meyyanur,
Salem – 636 004.

2. R.Rajasekar ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 25.09.2015 passed in M.C.O.P.No.160 of 2011 on the file of the Motor Vehicles Claims Tribunal, Special Court No.1, Salem.

For Appellant : Ms.Sharanya Vaidyanathan

For Respondents : Mr.C.Ramesh Babu, for R1
: No Appearance, for R2

JUDGEMENT

Aggrieved by the judgment and decree passed by the Motor Vehicles Claims Tribunal, Special Court No.1, Salem in M.C.O.P.No.160 of 2011 dated 25.09.2015, the owner has come up with this Appeal.

2. The case of the Appellant is that, the 2nd respondent filed a claim petition claiming a compensation of Rs.4,00,000/- on the ground that, on 01.12.2010 at about 3.45 pm., when the claimant/2nd respondent was driving a motor cycle in Namakkal – Salem Main road, a car bearing Regn.No.TN-27-TC-265 owned by the appellant, insured with the 1st respondent, driven by its driver in a rash and negligent manner, hit the motor cycle in which the 2nd respondent was travelling, from behind, as a result of which, the 2nd respondent sustained grievous injuries all over his body, for which, the claimant was hospitalised and took treatment, during which period, the claimant suffered loss of earning. Thereby, he filed a claim petition claiming compensation at the hands of the appellant and the 1st respondent for the injuries and loss sustained by him. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.2,73,000/- and directed the 1st respondent to pay the same to the claimant, however, granted liberty to the 1st respondent to recover the

award amount from the appellant/owner of the vehicle. Aggrieved by the said order, the appellant has come up with this appeal.

3. Learned counsel for the Appellant submitted that, the vehicle was comprehensively insured with the 1st respondent-insurer towards coverage of third party risks and merely because the vehicle was taken for the purpose of demonstration would not absolve the insurer from paying compensation arising out of any accident in respect of a third party. However, the tribunal has not properly considered the materials more especially the policy and has directed the 1st respondent/insurance company to pay the compensation to the claimant/2nd respondent with a further direction to recover the same from the appellant herein, which is grossly erroneous and therefore the findings with regard to the same requires interference. Accoridngly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1st respondent submitted that, though the vehicle was insured with the 1st respondent, however, it did not carry insurance for the purpose of being used for demonstration as no additional premium was paid under IMT 60.

Therefore, the insurer is not liable to pay compensation, which fact has been properly appreciated by the tribunal while awarding pay and recovery, which is just and reasonable and the same does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Though notice was served on the 2nd respondent and his name was printed in the cause list, however, none appeared on his behalf. Considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the materials available on record.

6. There is no quarrel with regard to the accident or the vehicle carrying insurance. The only ground on which the tribunal has ordered pay and recovery is that, no additional premium has been paid for the vehicle being carried for demonstration purpose as prescribed under IMT 60 and therefore, the insurance company will not be liable to pay compensation.

7. The policy which was carried by the vehicle is an Act only

policy and it covers the risks of any persons who are third parties to the situation. In the case on hand, the 2nd respondent/claimant is a third party to the whole issue as he is neither connected with the owner of the vehicle nor he is an occupant of the vehicle. Therefore, as per the provisions of the Motor Vehicles Act, 1988 (in short 'MV Act') and as per the definition of third party provided under the Act, the claimant would squarely fall within the ambit of third party and would be entitled for compensation.

8. The ground canvassed by the insurance company that the vehicle was taken for demonstration and no additional premium was paid for demonstration purpose cannot be a ground to negative the liability of the insurance company to pay compensation to third parties. Any own damage to the vehicle, if taken for demonstration purpose and not covered within the policy, no liability would enure on the insurer to compensate the owner of the vehicle. However, the claimant is a third party and has raised a claim with regard to the injuries sustained by him and the vehicle in issue having been involved in the accident and the vehicle carrying a proper policy covering third party risks, definitely the

liability falls on the insurer to pay the compensation by indemnifying the owner of the vehicle/appellant. However, the tribunal on an erroneous application of law had passed the impugned award directing the insurer to pay the compensation to the claimant and recover the same from appellant, which is not sustainable and only to that extent the award of the tribunal has to be interfered with.

9. Accordingly, this Appeal stands allowed, with the following modification to the impugned award passed by the Tribunal.

(i) The 1st respondent/insurer is directed to deposit the entire compensation awarded by the tribunal to the credit of M.C.O.P.No.160 of 2011 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 weeks (2) 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 2nd respondent/claimant through RTGS within a period of two (2) weeks thereafter.

(ii) The appellant is permitted to seek withdrawal of the compensation amount, if any paid by them, by filing necessary application before the Tribunal.

(iii) No costs.

20.11.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Vehicles Claims Tribunal, Special Court No.1,
Salem.

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

M.DHANDAPANI, J.

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