BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.338 of 2019
and
C.M.P(MD) No.4203 of 2019

The Divisional Manager,
New India Assurance Company Ltd,
No.242 B, Kamarajar Salai,
Madurai District. ..... Appellant /Respondent -2

-vs-

1. V.Deepan Kumar .... 1st Respondent/ Petitioner
2. R.Senthil Kumar 2nd Respondent/Respondent-1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the decree and judgment, dated 01.11.2018 made in M.C.O.P.No.189 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court) Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.Arjunvarma
for Mr.S.Rajasekar – For R1
: No appearance – For R2

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company, challenging the Award passed by the Tribunal made in M.C.O.P.No.189 of 2016, primarily on the ground of liability.

2. The claimant had contended that he was driving his two wheeler on 03.09.2015 at about 8.00 a.m in Madurai - Theni main road. During that time, a TATA Indica Car belonging to the first respondent was coming from the opposite direction in a rash and negligent manner and dashed against the petitioner's Motor Cycle on the wrong side of the road and the claimant had sustained multiple grievous injuries. An FIR was registered in Crime No.226 of 2015.

3. The claimant had contended that he was an E-Kart Delivery Executive and drawing a salary of Rs.8,726/- (Rupees Eight Thousand Seven Hundred and Twenty Six only) per month and he had sustained permanent disability of shortening of right leg and he cannot walk or stand for a

prolonged time and he cannot squat and he cannot ride a Motor Cycle. Therefore, he prayed for compensation of Rs.8,75,000/- (Rupees Eight Thousand Seventy Five Thousand only).

4. The owner of the vehicle remained ex-parte and the second respondent/ Insurance Company had filed a counter contending that the original Insurance Policy of the first respondent had expired on 20.10.2014. Thereafter, the new Insurance Policy has been taken by the first respondent only at about 11.20 a.m, on 03.09.2015 i.e., three hours after the accident. Therefore, the Insurance Company is not liable to pay the compensation. At the time of making the proposal, the owner of the vehicle viz., the first respondent has not disclosed the fact that already an accident has happened at about 8.00 a.m on the same day morning. The insurance being a contract based on good faith, the owner did not disclose the accident and for that the company is not liable to pay.

5. The Insurance Company had filed a counter contending that though the premium was paid only at about 11.20 a.m, due to the system error the policy reflected that it covers the period from 12.00.01 a.m of 03.09.2015

onwards. Therefore, the system error cannot be taken advantage by the insured person. He further contended that the Tribunal has not properly appreciated the fact that the Insurance Policy proposal itself was made only after the accident and hence the question of making liability upon the Insurance Company would not arise.

6. I have carefully considered the submissions made by the learned counsel on either side.

7. The learned counsel appearing for the appellant reiterated all the grounds mentioned in the memorandum of grounds of appeal. The Court also perused the proposal for the policy which was marked as Ex.R.2 on the side of the Insurance Company. In view of the fact that there is break in the insurance, the vehicle has been inspected at about 8.27 a.m, on 03.09.2015 only thereafter, the policy has been issued by the Insurance Company to the effect that the policy is effective from 12.00.01 a.m, on 03.09.2015. Therefore, it is clear that though the vehicle was inspected at about 8.27 a.m and the premium was received at about 11.28 a.m, on 03.09.2015, the policy has been issued giving retrospective effect from 12.00.01 am on 03.09.2015.

Having issued a policy giving retrospective effect, the Insurance company cannot turn around and contend that it is a system error and therefore the Company is not liable.

8. The learned counsel appearing for the appellant had further contended that being a contract of good faith, the owner of the vehicle having suppressed the fact of accident has taken place at about 08.00 am on 03.09.2015, ought to have disclosed the same in his proposal form. A perusal of the proposal form indicates that there is no column for disclosure of any such accident even in case of break in Insurance. Therefore, there is no question of suppression on the part of the first respondent who is the owner of the TATA Indica Car. When there is no suppression on the part of the owner of the TATA Indica Car, the question of considering the contract of Insurance under the ground of good faith contract would not arise.

9. The Tribunal has awarded a sum of Rs.1,04,000/- (Rupees One Lakh and Four Thousand only) as compensation for the injuries sustained by the claimant. Considering the fact that the entire Medical records that have been placed before the Court under EX.P2 and Ex.P.10, and also the fact that he as

an E-kart Employee is expected to drive through out the day, the quantum of compensation cannot be held to be unreasonable or exorbitant.

10. Considering the above said facts, there is no merit in the appeal. Accordingly this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

13.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal
(Special Sub-Court) Madurai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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