BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2023

Pronounced On : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.834 of 2019
and
C.M.P.(MD)No.10999 of 2019

The Branch Manager,
The Tata AIG General Insurance Company Limited.,
Peninsula, Corporate Park,
Piramal Tower, 9th Floor, Lower Parel,
Mumbai – 400 013. : Appellant/2nd Respondent

Vs.

1.P.Arumugam :1st Respondent/Petitioner

2.M.Prabhakaran : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.124 of 2012, dated 28.08.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Periyakulam.

For Appellants : Mr.J.S.Murali.

For Respondents : Mr.M.Saravanan, for R1.

: No Appearance, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.124 of 2012, dated 28.08.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Periyakulam.

2. The appellant/insurer, who was made liable to pay compensation of Rs.1,79,000/-, with interest at 7.5% per annum to the first respondent/claimant for the injury suffered by him, consequent to an accident occurred on 22.05.2012, challenged the liability mulcted on it.

3. It is pertinent to note that the appellant/insurer has not disputed the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the second respondent/first respondent and also the quantum of compensation awarded at by the Tribunal.

4. The only and main contention of the appellant/insurer is that the two wheeler involved in the accident was not at all insured with the appellant/second respondent on the date of accident.

5. It is the specific case of the appellant/insurer is that the second respondent/owner has produced a fabricated policy at the time of motor vehicle inspection, which was marked as Ex.R.6 before the Tribunal, for a period between 21.05.2012 to 20.05.2013, but, actually the vehicle was insured under Ex.R9 policy for the period between 25.05.2012 to 24.05.2013.

6. The appellant/second respondent/insurer in the counter statement has taken a stand that at the time of accident, the accident involved bike was not insured with the appellant/second respondent and as such they are not liable for the claim. Subsequently, the appellant/insurer has filed an additional counter specifically stating that the second respondent/first respondent's vehicle with Engine No.21C8056531 and Chassis No.ME121C082C2056726 was insured with the appellant/second respondent vide policy No.015192886000 from 20.00 hours of 25.05.2012 to the midnight of 24.05.2013 in favour of the second respondent/first respondent; that the appellant/second respondent after coming to know about the production of fake policy, sent a notice through registered post, dated 12.02.2013 to the second respondent/first respondent stating that the vehicle

has not been insured with the appellant/second respondent on the date of accident and directed him to furnish the correct insurance particulars of the above said vehicle and though the second respondent/first respondent had received the notice, they have neither sent any reply nor furnish the particulars sought for and that the appellant/second respondent has also sent complaints to the Office of the Superintendent of Police, Theni and the Inspector of Police, Jeyamangalam Police Station, for taking appropriate action against the persons, who were involved in the fabrication of the policy.

7. The second respondent/owner in the counter statement has disputed the mode of the accident alleged by the claimant and further stated that his Yamaha two wheeler was insured with the appellant/second respondent.

8. During enquiry, the second respondent/owner has examined himself as R.W.1 and exhibited 8 documents as Ex.R.1 to Ex.R.8 and the appellant/second respondent insurer has examined its legal officer Thiru.Ajith as R.W.2 and exhibited 9 documents as Ex.R.9 to Ex.R.17.

9. The Tribunal by holding that the unregistered Yamaha two wheeler involved in the accident was insured with the appellant/second respondent, has mulcted the entire liability on the appellant/second respondent.

10. The only point that arises for consideration is that as to whether the Tribunal erred in mulcting liability on the appellant/second respondent, despite showing that the vehicle involved in the accident was insured with the appellant/second respondent/insurance company for the period between 25.05.2012 to 24.05.2013 and that the second respondent/owner has produced a tampered and fabricated insurance policy.

11. The second respondent/owner of the vehicle has produced the receipts and delivery notes under Ex.R.1 to Ex.R.5, from whom, he had purchased the two wheeler and also the copy of the insurance policy under Ex.R.6, which is now disputed by the insurer. R.W.1 in his chief examination would say that he had paid road tax and the insurance amount to the Sivagami Motors and that after receiving the balance amount from Sriram City Union Finance Limited, they have handed over the two wheeler on 09.04.2012 through delivery note under Ex.R.5 and that they have also

issued the insurance policy under Ex.R.6. But, in cross examination, he would admit that Ex.R.1 to Ex.R.5 does not contain any entry or endorsement that the insurance amount was received by the Sivagami Motors; that there was a condition stipulated in Ex.R.5/delivery note that the purchaser has to use the vehicle after paying the road tax and the insurance amount and after registering the vehicle and that he had taken delivery of the vehicle after giving an undertaking to comply with the above directions. He would admit that he has not produced any receipts to say that he had paid the amount towards road tax and insurance policy to the Sivagami Motors.

12. In the subsequent cross examination, R.W.1 would say that he does not know the insurance policy coverage period and the policy number. R.W.2/Law Officer of the appellant/second respondent in his chief examination affidavit has reiterated the contentions raised in the counter statement as well as the additional counter statement.

13. The appellant/second respondent has produced the notice issued to the second respondent/owner along with insurance policy under Ex.R.9. In cross examination, R.W.2 would say specifically that Ex.R.6/policy was not issued by their company and that the same was not signed by anybody

representing their company. No doubt, R.W.2 in cross examination would say that the vehicle Chassis number, owner's name, policy number, premium amount and the signature of the Agnichakravarthi found in Ex.R.6 and Ex.R.9 are looking similar.

14. The Tribunal, taking note of the above evidence, has come to a decision that the above evidence of R.W.2 is not sufficient to prove that Ex.R.6 is a fabricated and forged document. It is common knowledge that when a document is alleged to be a fabricated document, the fabricated document would have only contained the particulars found in the original and since because, the particulars found in both the documents are one and the same, it cannot be taken as the fabricated document, in the absence of any other evidence to corroborate the same.

15. No doubt, R.W.2 would admit that Ex.R.9/policy was issued through Lotus Agencies. Though R.W.1 in his cross examination would say that he is going to examine the people from Sivagami Motors to show that he had paid road tax and insurance policy premium with them, admittedly, he has not taken any steps to examine the Manager or any other person attached with Sivagami Motors.

16. It is evident from the records and from the evidence of R.W.2 that the appellant/second respondent has sent a legal notice, dated 12.02.2013 to the second respondent/first respondent owner informing that his vehicle was not insured with them on the date of accident 22.05.2012 and requested him to furnish the correct insurance particulars of his vehicle covering the date of accident under Ex.R.10 and that the said legal notice has been received by the first respondent (owner) on 09.03.2013 underEx.R.11/Acknowledgement Card .

17. The second respondent/first respondent in his cross examination would specifically admit that he has not sent any reply in response to the notice issued by the appellant/second respondent under Ex.R.10. It is also not the case of the second respondent/first respondent that he has furnished the particulars sought for by the appellant/second respondent. According to the appellant/second respondent, they have sent complaints to the Office of the Superintendent of Police, Theni and to the Inspector of Police, Jeyamangalam Police Station under Ex.R12 and Ex.R.14, but there was no action.

18. It is also evident from the records that the appellant/second respondent has again sent a notice to the second respondent/first respondent on 02.06.2015 under Ex.R.16 and that the same was received by the first respondent under Ex.R.17/Acknowledgment. The Hon'ble Division Bench of this Court in ***United India Insurance Company Limited, Chennai Vs. R.Venkatesan and another*** reported in ***2003 (1) LW 31,*** considering the various judgments of other High Courts as well as the mandatory provisions stipulated in the Motor Vehicles Act and the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules has formulated the points for strict compliance for the parties concerned and the relevant passages are extracted hereunder:-

> *"19. .....*
>
> *v) The claimants are duty bound to furnish correct registration number of the vehicle, full insurance particulars as furnished by the police officer/investigation officer. If details are wanting at the time of filing of the claim petition, it is the duty of the claimants to ascertain all those particulars either from the police officer/investigation officer or from the Motor Vehicle Inspector of the Transport Department or from the Tribunal having jurisdiction and mention those particulars in the claim petition.*

vi) If the insurance company feels that the particulars furnished in the claim petition are not correct or not sufficient, it shall ascertain the necessary details from the police officer/investigation officer concerned or from the office of the Motor vehicle Inspector, and prove its case by positive evidence."

19. A learned Judge of this Court in ***New India Assurance Co. Ltd., Cuddalore Vs. S.Sivapathi and others*** reported in ***2011 (1) TN MAC 832*** has specifically held that since the claimants have failed to establish that there was a valid insurance policy, on the date of accident, the insurance company is not statutorily liable to pay compensation and the relevant passage is extracted hereunder:-

"18. On the facts of this case, this Court is of the considered view that merely because the Appellant-Insurance Company had taken out an Application under Section 170 of the Motor Vehicles Act, 1986, to contest the Claim Petition and raise all the defences that are open to them under the statute and when the owner of the vehicle had remained ex parte, it cannot be construed that it is the burden of the Insurance Company to prove the negative, i.e., that the vehicle was not insured with them at the time of accident. The Claimants have failed to establish that there was valid Insurance Policy, on the

date of accident and in such circumstances, the Insurance Company is not statutorily liable to pay compensation to the victims. In view of the above, the liability fastened on the Appellant-Insurance Company, to pay the compensation is set aside."

20. In the case on hand, no doubt, the owner himself has produced the copy of the insurance policy allegedly received from the Sivagami Motors. But, the insurer has taken a specific defence that the policy produced by the owner is a tampered and fabricated policy and that the vehicle was not insured with them on the date of accident and that subsequently, the said vehicle was insured with them for the period between 25.05.2012 to 24.05.2013.

21. As already pointed out, the first respondent has miserably failed to prove that he had paid necessary premium for having insurance coverage for the vehicle involved in the accident. He has also not taken any steps to examine anyone from the Sivagami Motors from whom, he had allegedly received Ex.P.6/policy. Moreover, despite receipt of notice from the appellant/second respondent/insurer, the second respondent/first respondent has not chosen to send any reply.

22. The Tribunal, without considering the above aspects in proper perspective, has mechanically given a finding that the vehicle involved in the accident was insured with the appellant/second respondent and on that basis, mulcted liability on the appellant/second respondent. Since the second respondent/first respondent has failed to prove that his vehicle was insured with the appellant/second respondent with valid and effective policy on the date of accident, the question of mulcting liability on the appellant /second respondent does not arise at all. Hence, this Court concludes that the impugned award directing the appellant/second respondent to pay the award amount to the claimant is liable to be set aside. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

23. In the result, the Civil Miscellaneous Appeal is allowed and impugned award passed in M.C.O.P.No.124 of 2012, dated 28.08.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Periyakulam, is set aside. The appellant/Insurer is directed to withdraw the amount, if any, already deposited and in case of withdrawal of any amount by the claimant, they are at liberty to recover the same from the second

respondent/owner of the vehicle. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2023

NCC : Yes\No
Index : Yes\ No
Internet : Yes\ No
das

To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Periyakulam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.834 of 2019
and
C.M.P.(MD)No.10999 of 2019

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