BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1229 of 2022
and
C.M.P.(MD)No.12598 of 2022

The Branch Manager,
The United India Insurance Company Ltd.,
7A, West Veli Street,
Madurai-625 001. ...Appellant/2nd Respondent

Vs.

1.Subash ...1st Respondent/Claimant
2.Marry Stella ...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 16.09.2022 made in M.C.O.P.No. 123 of 2017 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Madurai.

For Appellant : Mr.I.Suthakaran

For R1 : Mr.C.Vakeeswaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order of the Tribunal directing the Insurance Company to pay the compensation amount of Rs.85,000/- towards the injuries sustained by the claimant at the first instance to the claimants and then to recover the same from the owner of the offending vehicle.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i) The claimant was an auto driver. He was earning a sum of Rs.20,000/- per month. On 28.10.2016, when he was riding a two wheeler bearing Registration No.TN-64-H-1974 having his friend as a pillion rider in the Thirumangalam-Dindigul road, the Maruti Car bearing Registration No.TN-76-T-6834 came in the same direction dashed against the two wheeler from the behind. As a result, the claimant sustained grievous injuries. Hence, the compensation of Rs.3 lakhs was claimed.

(ii)the second respondent/Insurance Company before the Tribunal took a stand that the Insurance Policy is only valid from 30.01.2016 to 30.01.2017. The cheque issued by the owner of the car for renewal of the policy was dishonored. Therefore, the policy was cancelled and the same was also intimated to the Regional Transport Officer and the owner of the vehicle. Hence, it is the contention that the Insurance Company is not liable to pay the compensation amount as directed by the Tribunal.

4.Before the tribunal, on the side of the claimant P.W.1 was examined and Ex.P1 to Ex.P12 were marked. Ex.C1 was also marked. On the side of the respondents R.W.1 was examined and Ex.R1 to Ex.R3 were marked.

5.The tribunal on appreciation of evidence adduced on either side found that only driver of the Maruthi Car was negligent in driving the vehicle and awarded the compensation as follows:

S.No.	Head	Amount
1.	permanent disability	Rs.25,000/-
2.	Loss of income	Rs.28,000/-
3.	Pain and sufferings	Rs.20,000/-
4.	Nutritious food	Rs. 5,000/-
5.	For Discomfort	Rs. 5,000/-
6.	Transportation charges	Rs. 2,000/-
	Total	Rs.85,000/-

The Tribunal also directed the Insurance Company to pay the compensation at the first instance and recover the same from the owner of the offending car, thereafter. Challenging the same, the present Civil Miscellaneous Appeal had been filed by the Insurance Company.

6.The learned counsel for the appellant submitted that though the Insurance company had produced the evidence to the effect that the police was cancelled since the cheque issued for renewal of policy by the owner of the offending car was dishonored and the same had been intimated to the owner of the vehicle as well as the Regional Transport Officer, the Tribunal had directed the Insurance Company to pay the compensation and thereafter, recover the same from the owner of the vehicle. He further submitted that during the pendency of the appeal, the first respondent also died and steps could not be taken, despite his best efforts. The order of pay and recovery ordered by the Tribunal is not in accordance with law. The Tribunal in fact passed such an order following the judgment of this Court in the case of ***Prema and others vs. Sampthkumar [2019 (2) TN MAC 705]***, wherein this Court directed the Insurance Company to pay and recover.

7.As held by the this Court that the claim of a third party cannot be defeated for self created predicament of the Insurer in issuing policy without actually receiving premium, the direction issued by the Tribunal to pay a very meager amount and then to recover the same from the owner, in view of this Court does not require any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.The appellant is directed to deposit the entire compensation amount awarded by the Tribunal with interest and costs at the first instance to the credit of M.C.O.P.No.123 of 2017, on the file of the Motor Accident Claims Tribunal /Special Sub Court, Madurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the second respondent. On such deposit, the claimant is entitled to withdraw the same, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

NCC : Yes / No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal
Special Sub Court, Madurai.

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

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.1229 of 2022

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