IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

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

C.M.A.No.2340 of 2021
and
C.M.P.No.13144 of 2021

The Manager,
ICICI Lombard General Insurance Company Limited,
No.84/85, Wall Tax Road,
1st Floor, Arihand Plaza,
Chennai – 600 003. ... Appellant

Vs.

1. D.Purushothaman
2. P.Manimalai ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment made in MCOP.No.2744 of 2010 dated 10.07.2018 on the file of the Motor Accident Claims Tribunal, 5th Small Causes Court, Chennai.

For Appellant : Ms.K.Poomalai

For Respondents : M/s.A.A.Venkatesan for R1
No appearance for R2

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JUDGMENT

Assailing the award passed in MCOP.No.2744 of 2010 vide judgment dated 10.07.2018 on the file of the Motor Accident Claims Tribunal, 5th Small Causes Court, Chennai, the present civil miscellaneous appeal has been filed by the appellant / Insurance company.

2. Mr.A.A.Venkatesan, accepts notice for the first respondent. Though notice was served on the second respondent, no one appeared on his behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

3. The brief facts necessary to dispose of the above appeals are as follows :-

(i) On 12.04.2010 at about 22.30 hours, when the first respondent / claimant was driving a two wheeler bearing Regn.No.TN 37 9947, at that time a car bearing Regn.No.TN 05 V 8444 belonging to the second respondent insured with the appellant / insurance company driven by its driver which came in the opposite direction in a rash an negligent manner dashed the vehicle driven by the first respondent / claimant. As a result of which, the first respondent sustained grievous injuries all over his body. Thereby the claimant has filed a claim petition, claiming a compensation of Rs.6,50,000/- under various heads.

4. Before the Tribunal, the claimant examined himself as P.W.1 and P.W.2 and marked sixteen documents viz., Ex.P1 to Ex.P.11. On the side of the respondents, they examined R.W.1 and marked Ex.R1. After adjudication, the Tribunal awarded a sum of Rs.1,16,035/- as compensation in favour of the first respondent / claimant payable by the appellant / insurance company. Challenging the same, the present appeal has been filed by the appellant / insurance company.

5. The learned counsel appearing for the appellant / insurance company submitted that on the crucial date, viz., the date of accident, there was no valid subsisting policy for the vehicle as the earlier policy with the insurer had lapsed and in the absence of a valid policy, the insurer cannot be expected to indemnify the insured by paying the compensation to the injured. However, without properly appreciating the absence of a valid policy, the Tribunal has passed the award which requires interference.

6. Per contra, learned counsel appearing for the first respondent / claimant submits that the Motor Vehicles Act is a benevolent piece of legislation to safeguard the interests of the victim and merely because the policy of insurance has not been extended, the injured cannot be made to suffer by allowing the insurer to not pay the compensation. The Tribunal, appreciating the above, has passed the award and the same does not require any interference.

7. Heard the learned counsel for the appellant and the first respondent / claimant and perused the materials placed on record.

8. The only ground on which the compensation awarded is sought to be assailed by the appellant is that on the crucial date, there was no valid subsisting policy and in the absence of a valid policy the insurer cannot be made to pay the compensation.

9. True it is that the Motor Vehicles Act is a benevolent piece of legislation intended to safeguard the interests of the injured/victim

through payment of compensation on the basis of the insurance policy. However, in the absence of an valid and subsisting insurance policy, there could be no contract of insurance between the insurer and insured so as to enable the insurer to indemnify the insured in case of any calamitous situation.

10. In the present case, on the crucial date, there was no valid subsisting policy of insurance covering the vehicle, as the earlier policy with the appellant had already lapsed over the period of time. In the absence of a valid policy, there arises no necessity for the appellant/insurance company to indemnify the insured. However, forgetting the basic concept of insurance vis-a-vis the Motor Vehicles Act, the Tribunal has erroneously awarded compensation to be paid by the appellant, which cannot be allowed to stand.

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 10.07.2018 made in M.C.O.P.No.2744 of 2010 passed by the Motor Accident Claims Tribunal, 5th Small Causes Court, Chennai, is set aside. If any amount deposited by the

appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. The first respondent / claimant is at liberty to recover the award amount from the owner of the Car / second respondent bearing Regn.No.TN 05 V 8444 in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

28.11.2024

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1.Motor Accident Claims Tribunal, 5th Small Causes Court, Chennai.

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

M.DHANDAPANI, J.

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