IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.01.2024	Pronounced on 19.01.2024

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2278 and 2282 of 2023
and
C.M.P.Nos.10009 and 10022 of 2019

Tata AIG General Insurance Co., Ltd.,
Peansula Corporate Park, Piramal Tower,
9th Floor, Ganpatrao Kadam Marg, Lower Parel,
Mumbai 400 013. ...Appellant in both cases

Vs.

1.Vinodkumar
2.Prabu
3.Rajendran ... Respondents in C.M.A.No.2278 of 2019

1. Sathishkumar
2.Prabu
3.Rajendran ... Respondents in C.M.A.No.2282 of 2019

Common Prayer: Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award in Judgment and Decree dated 11.09.2018 made in M.C.O.P.Nos.640 and 641 of 2019 on the file of Motor Accident Claims Tribunal/II Additional District Court, Tiruppur.

In both appeals

For Appellant	: Mr.K.Vinod
For R1	: Mr.Ma.P.Thangavel
For R2	: Died
For R3	: Given up in both cases

COMMON JUDGMENT

These two appeals arises under the common judgment rendered in M.C.O.P.Nos.640 and 641 of 2023 and hence disposed of by this common judgment.

2. The Insurance Company is the appellant herein and the 1st respondent in both the appeals are the claimants before the Tribunal.

3. Challenging the award passed by the Tribunal on the ground of liability that no policy coverage was existed and what was projected is only a fake policy, the appellants / insurance company has preferred the present appeal.

4. One Sathishkumar who is claimant in M.C.O.P.No.640 of 2013 and one Vinod kumar claimant in M.C.O.P.No.641 of 2013 / first respondent in both the appeals filed the above cases claiming compensation for the injuries sustained in the road transport accident. On 25.03.2013 at about 8.30 a.m., while the 1st respondent in CMA No.2282 of 2019 was riding the two wheeler bearing Registration No.TN 39 X 5490 along with the 1st respondent in CMA No.2278 of 2019 as pillion rider, at the left extremity of the road, at that time, the Tata Sumo bearing Registration No.TN 28 AD 8200 came in a rash and negligent manner dashed against the motorcycle and both the 1st respondents sustained grievous injuries. They were immediately taken to Palladam Government Hospital and later to CMC Hospital, Coimbatore and they underwent treatment in KMCH Hospital, Coimbatore.

5. The Insurance Company filed separate counter statements before the Tribunal disputing the alleged policy coverage and stated that no such policy coverage was issued by the Insurance Company and they are also lodged complaint before the Avinashipalayam Police station.

6. During the trial, the 1st respondent in both the appeals were examined as P.W.1 & P.W.2 and Exs.R1 to R7 were marked. The Assistant from the Insurance Company was examined as R.W.1 and the search results for the offending vehicle which shows Nil Insurance Company policy coverage was marked as Ex.R3. Notice issued to R2 and complaint preferred by the Insurance Company of the police station were marked as Exs.R1 & R2.

7. After trial, on consideration of both oral and documentary evidence, the learned II Additional District Judge, Tirupur has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle which is insured with the Insurance Company and awarded the compensation. Aggrieved against the said award, the insurance company has preferred the present appeal.

8. Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent/claimants and perused the materials available on record.

9. The learned counsel appearing for the appellant/Insurance Company draw my attention to the plea raised by the Insurance Company in the counter statement disputing the genuineness of the alleged policy coverage.

10. On perusal of the lower Court records, I find that neither the claimants/1st respondent nor the Insurance Company filed a copy of the insurance policy. The appellant/Insurance Company claimed that since it is a fake policy, it was not marked as document before the Tribunal. It appears that, based upon Ex.R1 Motor Vehicle Inspectors Report wherein the policy number is mentioned by the Inspector who had issued M.V report was relied upon by the Tribunal and come to the conclusion that there was a policy coverage existed at the time of accident.

11. Ex.R3 is the computer print out of the search results showing that the said vehicle was not insured during the relevant point of time and hence I find that in the absence of positive evidence regarding the policy, the trial Court has committed an error in coming to the conclusion and accordingly the finding to that effect stands vacated.

12. It remains to be stated that the complaint was given by one of the person which is Ex.P1- F.IR. Even in the F.I.R which came to be issued, it is mentioned as 8.00a.m the time of the accident and hence in the absence of any positive evidence, the Tribunal came to the conclusion that there is a valid insurance policy.

13. In the decision reported in *2018(2)TN MAC 215 (DB) [Shriram General Insurance Company Limited Vs.R.Maheswari and others]* when the Insurance Company comes with a specific plea that there is no insurance policy, the claimants have to take steps to establish that the offending vehicle was duly insured with the insurer and in the absence of any positive evidence, the Insurance company cannot be mulcted with liability. Hence, this Court is of the considered view that the insurance company cannot be fastened with any liability in the absence of any positive evidence about the policy coverage.

14. The appellant-Insurance Company is exonerated from its liability on the point of quantum of compensation. I find that the award passed by the Tribunal is just and fair and accordingly the owner of the vehicle-second

respondent is liable to pay compensation to the 1st respondents/claimants in both the appeals.

15. In fine, both the Civil Miscellaneous Appeals are partly-allowed. The compensation awarded by the Tribunal in both the appeals are confirmed. The second respondent / owner of the vehicle is directed to deposit the compensation amount awarded by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. On such deposit both the first respondent in both the appeals are permitted to withdraw the same along with interest and costs. Consequently, connected C.M.Ps are closed. No costs.

19.01.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation:Yes/No
Speaking Order: Yes/no

To
1. The Motor Accident Claims Tribunal
   II Additional District Court, Tiruppur.
2. The Section Officer,
   V.R.Section, High Court of Madras,Chennai.

RMT.TEEKAA RAMAN.J,

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Judgment made in
C.M.A.Nos.2278 and 2282 of 2023 and
C.M.P.Nos.10009 and 10022 of 2019

Dated:19.01.2024