



C.M.A.(MD).No.113 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD).No.113 of 2019

and

C.M.P(MD)No.1374 of 2019

The Branch Manager,
United India Insurance Company Limited,
Branch Office,
Madurai.

... Appellant

Vs,

1.Subbaiah
2.M.Sethupathi

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, as against the Fair and Decreetal order dated 14.09.2017 passed in I.A.No.315 of 2006 in M.C.O.P.No.66 of 2000 before the Motor Accident Claims Tribunal (Subordinate Judge), Ramanathapuram.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.H.Arumugam for R.1

No appearance for R.2

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JUDGMENT

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The present appeal has been filed by the second respondent in M.C.O.P.No.66 of 2000 on the file of the Motor Accident Claims Tribunal/Sub Court, Ramanathapuram, challenging the dismissal order passed in the review application.

2. The first respondent herein as claim petitioner had filed M.C.O.P.No.66 of 2000 claiming compensation. In the said claim petition, in column No.16, it was mentioned that offending vehicle is owned by the first respondent.

3. A counter was filed by the Insurance Company fairly denying the fact that the vehicle was not insured with them. It is pertinent to point out that there was no specific denial on the part of the Insurance Company denying that the vehicle owned by the first respondent was not insured with them. The Tribunal relying upon the reference made to the Motor Vehicle Inspector Report in Ex.P.6, proceeded to hold that the vehicle is insured with the second respondent Insurance Company and mulcted liability upon the Insurance Company.



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4. Three years after passing of the award, the Insurance Company had filed I.A.No.315 of 2006 under Order 47 Rule 1 C.P.C., to review the said award on the ground that the policy mentioned in the Motor Vehicle Inspector's report does not belong to the vehicle in question. The Tribunal after considering the entire evidence on record dismissed the review application and modified the order to the effect that the Insurance Company shall pay the amount and recover the same from the owner of the vehicle. This modified award in the review application is under challenge in the present appeal.

5. The learned counsel appearing for the appellant would contend that even though the Tribunal has arrived at a finding that the insurance policy does not relate to the vehicle in question, passed an order of pay and recovery.

6. Per contra, the learned counsel appearing for the respondents/claimants prayed for sustaining the award passed by the Tribunal. The learned counsel for the respondents/claimants would also contend that the present appeal is not maintainable as against the order passed in the review



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application without challenging the award passed in M.C.O.P.No.66 of 2000.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. As per the Order 47 Rule 1 C.P.C., unless the review petitioner establishes that he had discovered a new important matter or evidence which he is not able to discover, despite exercising due diligence, only then, the jurisdiction under Order 47 Rule 1 C.P.C., can be invoked. In the present case, in the claim petition, it has been specifically averred that the vehicle is insured with the second respondent Insurance Company. The Company has not denied the same specifically in the counter. When Motor Vehicle Inspector's report being marked as Ex.P.6, the insurance company then and there should have objected to the same or should have cross examined by the Motor Vehicle Inspector. Having failed to do so, they cannot invoke Order 47 Rule 1 of CPC, to review the award. However, the tribunal has not modified the quantum but has only modified the award to pay and recovery. This Court finds that there are no merits to interfere in the



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present appeal arising out of the order passed by the review petition. There are no merits in this appeal.

9. Therefore, this Civil Miscellaneous Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

22.04.2024

Internet: Yes/No
Index: Yes/No
RJR

To
The Motor Accident Claims Tribunal
(Subordinate Judge), Ramanathapuram.



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R.VIJAYAKUMAR, J.

RJR

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C.M.P.No.1374 of 2019**

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