



C.M.A(MD)No.1158 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 14.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.1158 of 2014

M/s.New India Assurance Company Limited
Through its
Divisional Manager [TP-HUB],
258-B Kamarajar Salai,
Madurai.

... Appellant/2nd Respondent

Vs.

1.T.Arichandran

... 1st Respondent/Claimant

2.AR.AS.P.V.P.V

Through its Director,
A unit of Shenbagam Industries,
58-A T.P.K Road,
Pasumalai,
Madurai.

... 2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, to set aside the award and judgment of the Tribunal, dated 06.03.2014 with regard to liability of appellant / second respondent in M.C.O.P.No.220 of 2012 on the file of the Motor Accident Claims Tribunal [II Additional Subordinate Judge], Madurai.

For Appellant : Mr.S.Lakshmanan



WEB COPY



C.M.A(MD)No.1158 of 2014

For R-1 : Mr.M.P.Senthil

For R-2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.220 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Madurai, wherein the first respondent herein has filed a claim petition for the injury sustained in the road accident as against the second respondent and appellant herein.

2. The Tribunal has awarded a sum of Rs.2,16,369/- with interest at the rate of 7.5% per annum and also directed the second respondent to pay the amount to the petitioner and the same can be recovered from the first respondent under the doctrine of 'pay and recover'. Against the order passed by the Tribunal, the second respondent / Insurance Company has preferred this appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.



C.M.A(MD)No.1158 of 2014

WEB COPY

4. The brief facts of the petition averments are as follows:

On 14.08.2011, when the petitioner was riding in the motor cycle bearing Registration No.TN 58 X 0550 in Madurai Town at that time, the private car bearing Registration No.TN 58 X TC 0006 came in a rash and negligent manner and hit against the motor cyclist. Due to which the petitioner sustained fracture injuries all over the body. The accident was happened due to the negligence on the part of the driver of the first respondent and the first respondent vehicle was insured with the second respondent. Due to the accident, the petitioner was permanently disabled and thereby, he claimed compensation of Rs.3,00,000/-.

5. The brief averments of the counter filed by the second respondent are as follows:

The first respondent had insured the vehicle under Commercial Vehicle Motor Trade Road Risk - PCK - F policy for the period from 28.01.2011 to 27.01.2012. The policy is valid only on delivery from the manufacturer of the vehicle till the sale of the vehicle by the dealer (i.e.,) during the trade period only. One Mr.Dr.G.Davegill had purchased the



C.M.A(MD)No.1158 of 2014

vehicle from the first respondent on 29.07.2011 and he used the vehicle without registration. After the date of accident, he registered the vehicle in his name from 30.08.2011 to 29.08.2012. During the course of registration he insured with TATA AIG General Insurance Company Limited from 29.08.2011 to 28.08.2012. Hence, on the date of accident the vehicle involved in this accident has no valid insurance with this respondent and no valid registration certificate. Therefore, the respondent is noway liable to pay compensation to the petitioner and the petition is liable to be dismissed.

6. Before the Tribunal, in order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.5 and marked Exhibits P.1 to P.16 and on the side of the respondent, R.W.1 to R.W.4 were examined and marked Exhibits R.1 to R.4.

7. After considering all the evidences adduced by both the parties, the Tribunal has awarded a sum of Rs.2,16,369/- by directing the second respondent / Insurance Company to pay the amount and recover the same from the first respondent. Aggrieved by the order passed by the Tribunal,



C.M.A(MD)No.1158 of 2014

the Insurance Company / second respondent has filed this petition on various grounds including on the ground of liability.

8. The learned Counsel appearing for the appellant / second respondent would contend that the vehicle involved in the accident was insured with the Insurance Company under Commercial Vehicle Motor Trade Road Risk - PCK - F Policy for the period from 28.01.2011 to 27.01.2012. The policy is valid only on delivery from the manufacturer of the vehicle till the sale of vehicle by the dealer (i.e.,) during the trade period only. But in this case, the vehicle was sold to one Doctor G.Davegil and he without registering the vehicle, drove the vehicle and caused the accident. Therefore, the appellant / second respondent is noway liable to pay compensation, but the Tribunal without considering the same, awarded compensation and directed the appellant / second respondent to pay the amount to the petitioner and recover the same from the first respondent.

9. The learned Counsel appearing for the first respondent / petitioner would contend that the date of accident is 14.08.2011 and on the



C.M.A(MD)No.1158 of 2014

WEB COPY

date of accident, the vehicle was insured with the second respondent and the policy was in force. The policy is valid from the manufacturer of the vehicle till the sale of the vehicle. If so, unless he is sold and registered in the name of the owner, the Insurance Company is liable to pay compensation. Therefore, the appellant / second respondent is liable to pay compensation and the Tribunal also after considering all these aspects, awarded fair and just compensation and directed the second respondent to pay the award amount to the first respondent / petitioner and ordered to recover the same from the second respondent / first respondent, who is the dealer. Hence, the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute in respect of the negligence on the part of the first respondent and the quantum awarded by the Tribunal. The present appeal has been preferred only as against the liability.



C.M.A(MD)No.1158 of 2014

WEB COPY

According to the appellant / second respondent, the vehicle which involved in the accident was insured with the appellant / second respondent under Commercial Vehicle Motor Trade Road Risk - PCK - F Policy for the period from 28.01.2011 to 27.01.2012. The date of accident is 14.08.2011. Therefore, on the date of accident, the policy was in force. Further the policy is valid till the sale of vehicle. In this case, it is admitted fact that the vehicle was only registered on 30.08.2011 in the name of one Davegil. Therefore, on the date of accident, the vehicle was not in the name of Davegil and no evidence to show that on the date of accident, the vehicle was sold to Davegil. The respondents have examined and marked Exhibit R.1 in original invoice, dated 29.07.2011. But unless the vehicle is registered with a Regional Transport Office, the first respondent being the dealer could not delivered the vehicle to the purchaser.

12. In this context, D.W.1, who is the Motor Vehicle Inspector in his evidence stated that unless the vehicle is registered with the Regional Transport Office, no ownership is vested with the purchaser and till then the dealer is responsible and the dealer is the owner of the vehicle. R.W.2, who is the Assistant working in Madurai South Regional Transport Office



C.M.A(MD)No.1158 of 2014

deposed that the vehicle is registered only on 30.08.2011. But the accident took place on 14.08.2011. Hence, the ownership is not vested with the purchaser on the date of accident. The said vehicle was insured from 29.08.2011 to 28.08.2012. Thereby, it is clear that the dealer is the owner of the vehicle till 30.08.2011. Further R.W.4, who is the officer of the second respondent also produced the copy of policy as Exhibit R.4 which is trade package policy issued by the first respondent. Therefore, until the vehicle is registered in the name of the purchaser, the ownership is with the dealer, that is why for that purpose only the dealer insured the vehicle with the second respondent Company. Therefore, the second respondent Company is liable to pay compensation to the petitioner. At the same time, the first respondent being the dealer has allowed the vehicle to ply in the public road without registering the vehicle and thereby, he violated the conditions of policy. Hence, he is liable to pay compensation. However, since the petitioner is being the third party, it is appropriate to order for pay and recover and the second respondent can pay the amount to the first respondent / petitioner and the same can be recovered by the appellant / second respondent from the second respondent / first respondent. Therefore, the Tribunal also after considering all these aspects, correctly



C.M.A(MD)No.1158 of 2014

ordered to pay and recover. There is no dispute in respect of the quantum of the amount and the appellant / second respondent has not disputed the quantum. The first respondent / petitioner also not preferred any appeal as against the quantum of the amount.

13. In view of the above said discussions, this Court is of the opinion that this appeal has no merits and deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal stands dismissed. The appellant / second respondent is directed to deposit the entire amount within two months from the date of the judgment, if already not deposited. There shall be no order as to costs.

14.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Motor Accident Claims Tribunal
[II Additional Subordinate Judge],
Madurai.



C.M.A(MD)No.1158 of 2014

WEB COPY

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



WEB COPY



C.M.A(MD)No.1158 of 2014

P. DHANABAL, J.

BTR

C.M.A(MD)No.1158 of 2014

14.02.2024