BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **07.11.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.1154 of 2018
and
C.M.P(MD)No.11860 of 2018

The Divisional Manager,
M/s.Oriental Insurance Company Limited,
No.4, Promenade Road,
Cantonment,
Tiruchirappalli -1. ...Appellant/Respondent

.Vs.

M.Mohammed Sheik Kadiar ... Respondent/Petitioner

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.827 of 2015, dated 18.06.2018, on the file of the Motor Accidents Claims Tribunal/ Special Sub-Court, Thanjavur.

For Appellant : Mr.C.Jawahar Ravindran

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award passed in M.C.O.P.No.827 of 2015, dated 18.06.2018, on the file of the Motor Accidents Claims Tribunal/Special Sub-Court, Thanjavur.

2.The case of the claimant is set out hereunder in brief:

On 09.03.2015, at about 10.00 a.m., the claimant was travelling in his car bearing Registration No.TN 49 BZ 6495 from Athiramapattinam to Thanjavur along with three other persons. The car was driven by Mohammed Ismail and when the vehicle was proceeding along Pattukkottai-Thanjavur Road, near Saidambalpuram, the car lost its control and turned topsy turvy on the left side of the road. Due to the said impact, the claimant as well as others sustained injuries. The claimant got admitted at Meenakshi Hospital, Thanjavur and treated as an inpatient. He is a retired Agricultural Officer and he was earning a sum of Rs. 10,000/- p.m., by doing agriculture. The above said car belongs to him. Due to the rash and negligent driving of the driver, the accident occurred. His vehicle is insured with the second respondent. For the injuries sustained in the accident, he made a claim of Rs.3 lakhs as compensation from the respondent.

3.It is counteracted by the second respondent by filing counter to the effect that the Petitioner is put strict proof that the driver of the car had a valid driving licence at the relevant point of time. It has been further stated that the Insurance Company does not require to assume risk for the death or bodily injury to the owner of the vehicle.

4.At trial, on the Petitioner's side, the claimant examined himself as P.W.1 and Dr.V.Jayabalan has been examined as P.W.2. 14 documents have been marked on the claimant's side. Ex.P6 is the driving licence of the driver of the car(Mohammed Ismail). On the respondent side, one witness was examined and copy of Insurance Policy is Ex.R1 and copy of the Insurance policy is Ex.R2.

5.Upon consideration, the Tribunal came to the conclusion that the driver was not in possession of valid driving licence at the relevant point of time as per Ex.P6(copy of the Driving Licence of the driver/Mohammed Ismail). As regards the second contention of the Insurance Company, it has been held that as per the premium details for the personal accident cover for the owner-cum-driver, an amount of Rs.100/- was collected as premium by the Insurance Company. Therefore, it was concluded that the Insurance Company cannot escape from the liability to pay the compensation.

6.Despite the receipt of notice, the sole respondent neither appeared in person nor entered appearance through counsel.

7.Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant would strenuously argue that the driver of the car did not have valid driving licence at the relevant point of time. The second limb of his argument is that the claimant being owner of the car, as the Insurance Company is only liable to compensate third parties and therefore, the Insurance company is not liable to pay any compensation to the claimant, he being the owner of the vehicle.

8.As regards the first point namely, the driver of the car did not possess valid driving licence, the said licence has been marked as Ex.P6. A careful perusal of Ex.P6, reveals that it is issued to the said driver Mohammed Ismail. The date of accident is 09.03.2015. As per Ex.P6, the said driver is given licence to drive two wheeler and Light Motor Vehicle. Even these details have been found in Ex.P5(Inspection Report of Motor Vehicles involved in the accident) pertaining to the above said car. Despite the said details found in the Motor Vehicle Inspector's report and that apart, the relevant licence having been marked as Ex.P6, the stand of the Insurance Company that the driver of the car did not possess valid driving licence at the relevant point of time, does not hold water.

9.As regards the second point put-forth by the learned counsel for the appellant to the effect that the owner of the car is not covered under the Insurance Policy and the claimant being the owner of the car, has filed this claim petition and therefore, the Insurance Company is not liable to pay any compensation. The details of the Insurance Policy have to be gone into. As per the terms of the Policy (Ex.R1) and the copy of the Insurance Policy Ex.R2(Ex.P7), the premium details are extracted hereunder:

1.B.T.P BASIC	- Rs.1,332.00/-
2.P.A to unnamed persons for five persons	- Rs. 100.00/-
3.PA-Owner	- Rs 100.00/-

4.PA Cover for paid drivers,cleaners and Conductors - Rs. 100.00/-

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Gross(B) -Rs, 1,682.00/-

10.So from a close perusal of the above said details in respect of Personal Accident Coverage for the owner, premium of Rs.100/- has been collected by the Insurance Company. Having collected premium of Rs.100/- exclusively for the personal accident coverage for the owner, it should not lie in the mouth of the Insurance Company that the claimant who is the owner of the vehicle claimed insurance and who is not a third party. Therefore, I find no good reasons to upset the finding of the Tribunal in this regard.

11.Based on the aforesaid discussions and observations, the Civil Miscellaneous Appeal stands dismissed; and

1)The appellant-Insurance Company is directed to deposit the award amount of Rs.92,600/-, with interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit, except the period from 19.08.2016 to 12.07.2017 during which period the claim petition was under dismissal, as ordered by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the award amount, if any already deposited.

2)On such deposit being made, the respondent herein/claimant is permitted to withdraw the above said award amount together with accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal;

3)There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Motor Accidents Claims Tribunal-cum-
Special Sub-Court,
Thanjavur.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

R.KALAIMATHI,J.

vsn

JUDGMENT MADE IN

C.M.A(MD)No.1154 of 2018
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