BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)No.1181 of 2022
and
C.M.P(MD)No.11984 of 2022

Shri Ram General Insurance Company Ltd.,
R-8, Riico Industrial Area, Sitapura,
Jaipur, Rajasthan – 302 022.
represented by
The Manager. ... Appellant /2nd Respondent

Vs.

1.Elakkia

2.Minor. Kalaimani
(Rep. by her mother and next friend 1st Respondent)

3.Indira

4.Perumal ... Respondent Nos.1 to 4/Petitioners

5.Sulthan Ibrahim ... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment made in M.C.O.P.No.354 of 2012 dated 21.06.2022 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Dindigul.

For Appellant : Mr.N.Shyllappa Kalyan
For R1 - R4 : Mr.T.Vadivelan
For R5 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the judgment and decree dated 21.06.2022 passed in M.C.O.P.No.354 of 2012 by the Motor Accident Claims Tribunal/Additional District Judge, Dindigul.

2. The 2nd respondent/Insurance Company in M.C.O.P.No.354 of 2012 is the appellant herein.

3. The petitioners/claimants are respondents 1 to 4 herein and they are the dependents of the deceased Manikandan, who died in a motor traffic accident. The 5th respondent herein is the 1st respondent in M.C.O.P.No.354 of 2012 and owner of the offending vehicle and he remained ex-parte.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 354 of 2012 is adopted hereunder.

5. The brief facts of the case:

On 09.02.2012 at about 02.45 p.m. the deceased Manikandan was riding his two wheeler bearing registration No.TN 59 L 9694 along the

Bodi - Theni road from north to south keeping left near Bodi Vilakku. At that time, the car bearing registration No.TN 60 D 6715 belonging to the 1st respondent was driven by its driver in a rash and negligent manner coming from opposite direction and dashed against the two wheeler. The deceased Manikandan sustained multiple grievous injuries and died after some hours. The deceased was aged 30 years and was earning Rs.10,000/- as an agriculturist. The first respondent's vehicle was insured with the 2nd respondent. The petitioners, who are wife, child and parents of the deceased, filed the claim petition seeking compensation of Rs.15,00,000/-.

6. The 1st respondent remained ex-parte before the Tribunal.

7. The second respondent/Insurance Company strongly objected the claim petition by contending that at the time of accident, the first respondent's vehicle was not insured with the second respondent. The first respondent's vehicle was insured for the period from 10.02.2012 to 09.02.2013 only. The accident occurred on 09.02.2012. So, the second respondent is not liable to pay any compensation.

8. The Tribunal has tried the claim petition and both side adduced oral and documentary evidence. After hearing both and after considering the evidence, the Tribunal has passed the impugned award and awarded a total compensation of Rs.11,30,200/- with interest. Aggrieved by the said award, the 2nd respondent/Insurance Company preferred this Civil Miscellaneous Appeal.

9. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

10. The learned counsel for the appellant/2nd respondent/ Insurance Company vehemently contended that the claimants have not proved the validity of the insurance policy of the 1st respondent with the 2nd respondent. The petitioners marked only photocopy of insurance policy as Ex.P.4, which was marked subject to objection. Whereas the 2nd respondent/Insurance Company has marked the true copy of Insurance Policy as Ex.R.1. From Ex.R.1, it is revealed that the vehicle bearing registration No.TN 60 D 6715 was insured for the period only from 10.02.2012 to 09.02.2013 and cash receipt was also issued only 10.02.2012. Ex.P.4 – Photocopy, which is a forged one and from Ex.P.4

it is seen as if the vehicle was insured from 04.02.2012 to 03.02.2013. The Tribunal failed to appreciate the evidence and failed to hold that the 2nd respondent/Insurance Company proved the validity of the policy. The 2nd respondent/Insurance Company is not liable to pay compensation as Ex.P.4 is a fake one while its true copy is marked as Ex.R.1.

11. The learned counsel for the petitioners contended that the factum of insurance policy was clearly mentioned by the Motor Vehicle Inspector in his report Ex.P.7. Moreover, the photocopy of insurance policy - Ex.P.4 was issued by the Investigating Officer. The Tribunal correctly appreciated the evidence and awarded compensation. As the offending vehicle was insured with the 2nd respondent, the 2nd respondent is liable to pay compensation. In support of his argument, the learned counsel for the petitioners has relied on the citation reported in **2021 (1) TN MAC 555**, wherein it is held in paragraph No.16 as follows:

> "16. ......The 2nd respondent ought to have brought to the notice of the police about the cover note produced by the claimants before the Tribunal and ought to have taken steps for investigation by the police with regard to genuineness of cover note......."

12. Considered the arguments of both sides and perused records of the case. There is no dispute that the accident took place due to the offending vehicle, which was driven by its driver in a rash and negligent manner at the time of accident. There is also no dispute regarding the deceased who died in the accident and also the age and avocation of the deceased. There is no dispute regarding the income and multiplier fixed by the Tribunal.

13. In this case, the only main dispute is whether the offending vehicle TN 60 D 6715 is insured for the period from 04.02.2012 to 03.02.2013 or for the period from 10.02.2012 to 09.02.2013. Both sides marked policy as Ex.P4 and Ex.R.1. Ex.P.4 is the photocopy of the policy, which was marked subject to objection. Ex.R.1 is the true copy of insurance policy it was not disputed. Both sides admitted the signature of the undersigned therein. Whileso, the petitioners state that Ex.P.4 was issued by the investigating officer and also in Ex.P.7 - Motor Vehicle Inspector's Report, the details of insurance were mentioned. On perusal of records, it is clear that the 2nd respondent/Insurance Company from its counter itself contended that the offending vehicle was insured only from 10.02.2012 to 09.02.2013. In this circumstance, the counsel for the 2^{nd} respondent/Insurance Company contends that the cash for the policy was

paid only on 10.02.2012 and a cash receipt was also issued on the same date. He draws the attention of the court to peruse both Ex.P.4 and Ex.R.1 wherein under the caption **Limitation as to use** it is mentioned as "In witness whereof the undersigned being authorized by and on behalf of the company has/have herein to set his/their hands at head office II on 10-FEB-12." On perusal of naked eye it is very clear that the version of the above terms is found correct in both Ex.P.4 and Ex.R.1. But, Ex.P.4 photocopy mentions the policy period from 04.02.2012 to 03.02.2013, in such case the version under caption **Limitation as to use** has to be mentioned as 'on 04-FEB-12". There is no acceptable explanation given by the petitioners' side. In such cases, the burden of proof of genuineness of insurance lies on the petitioners. Moreover, the owner of the offending vehicle remained ex-parte. The petitioners have not attempted to examine the owner of the offending vehicle. Therefore, the Tribunal has failed to appreciate the evidences adduced by parties and failed to accept the Ex.R.1, which is true copy of Insurance Policy signed by the Authorized Signatory. Hence, there is no hesitation in accepting the contention of the 2nd respondent/Insurance Company that Ex.P.4, which is photocopy of policy, is created and manipulated one. Accordingly, it is proved.

14. On this basis, since the offending vehicle was not insured with the 2nd respondent/Insurance Company on the date of accident, the 2nd respondent/Insurance Company is not liable to pay any compensation on behalf of the 1st respondent, who is the vehicle owner. However, the petitioners are entitled to claim compensation from the 1st respondent/owner of the offending vehicle. Thus, the Tribunal has miserably failed to properly appreciate the evidence adduced in this case and therefore, the award passed by the Tribunal warrants interference and the Civil Miscellaneous Appeal has to be allowed.

15. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The judgment and decree dated 21.06.2022 passed in M.C.O.P.No.354 of 2012 by the Motor Accident Claims Tribunal/Additional District Judge, Dindigul, is set aside as against the appellant/2nd respondent/Insurance Company and it is exonerated from the liability. However, the award of the Tribunal as against the 1st respondent in the claim petition, who is the owner of the offending vehicle, is hereby confirmed. The apportionment of award amount to the claimants is also confirmed

(iii) If any amount deposited by the appellant/2nd respondent/Insurance Company in this case either before the Tribunal or before this Court, the same shall be ordered to be withdrawn by the appellant/2nd respondent/Insurance Company on appropriate application.

(iv) If any amount, from out of amount deposited by the appellant/2nd respondent/Insurance Company, withdrawn by the respondents/claimants, the respondents/claimants shall refund the same to the Insurance Company.

(v) The 5th respondent/1st respondent/owner of the offending vehicle TN 60 D 6715 is directed to deposit the entire compensation amount of Rs.11,30,200/- (Rupees Eleven Lakhs Thirty Thousand and Two Hundred only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.354 of 2012 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Dindigul within a period of six weeks from the date of receipt of a copy of this order.

(vi) The first petitioner/claimant is entitled to receive a sum of Rs.7,00,000/- and the 2nd minor petitioner/claimant is entitled to receive a sum of Rs.4,30,200/- with proportionate interests and costs.

(vii) On such deposit being made by the 5th respondent/1st respondent/owner of offending vehicle, the 1st claimant is permitted to withdraw her entire share amount with proportionate interest and cost by filing appropriate application before the Tribunal. The apportioned amount with proportionate interest and cost towards minor 2nd petitioner/claimant shall be deposited in any one of the nationalized bank in the name of 2nd petitioner/claimant till he attains majority and the first petitioner/1st respondent herein is entitled to receive interest payable on the said deposit once in three months. Consequently, connected Miscellaneous Petition is closed.

27.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accidents Claims Tribunal
(Additional District Judge),
Dindigul.

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

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A(MD)No.1181 of 2022
and
C.M.P(MD)No.11984 of 2022

27.03.2024