BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.837 of 2017
and
C.M.P(MD)No.8956 of 2017

TATA AIG General Insurance Company Ltd.,
Mount Road,
Chennai. ... Appellant/2nd Respondent

Vs.

1.Murugesan ... Respondent/Petitioner

2.A.Manojkumar ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award and decree, dated 06.02.2017 made in M.C.O.P.No.17 of 2014 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Theni.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 : Mr.S.Vignesh Shunmugam
for M/s.Ajmal Associates

For R2 : No Appearance

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.17 of 2014 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Theni primarily on the ground of liability.

2. According to the injured claimant, while he was crossing the road on 10.07.2013 at 08.00 p.m, the two wheeler owned and driven by the 1st respondent came in a rash and negligent manner and dashed against him. Due to the said impact, he had sustained grievous injuries. According to the claimant, the two wheeler is insured with the 2nd respondent, namely TATA AIG General Insurance Company Ltd,.

3. The Insurance Company had filed a counter contending that the policy for the said vehicle was taken only on 11.07.2013 at 07.00 p.m and therefore, there was no policy subsisting for the vehicle involved in the accident on the date of accident.

4. The tribunal primarily relying upon Exhibit P.3 Motor Vehicle

Inspector's Report came to a conclusion that the vehicle was insured with the 2nd respondent on the date of accident. The tribunal has proceeded to award a compensation of Rs.2,29,600/- to be paid jointly and severally by the respondents 1 and 2. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant, they have produced the insurance policy as Exhibit R.1. According to him, the policy commences only from 07.00 p.m on 11.07.2013 and it extends upto midnight of 10.07.2014. Since the accident has taken place on 10.07.2013 at about 08.00 p.m, the policy does not cover the accident. He further contended that the tribunal was not right in relying upon the Motor Vehicle Inspector's report for arriving at a finding that the vehicle was insured at the relevant point of time.

6. Per contra, the learned counsel appearing for the 1st respondent had contended that the owner of the vehicle had filed a counter specifically pointing out that the policy is in force on the date of accident. Therefore, the tribunal was right in mulcting the liability upon the insurance company.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The present appeal has been filed by the Insurance Company on the sole ground that there was no policy in force on the date of accident, namely 10.07.2013. Though the owner had filed a counter contending that the policy was subsisting for the offending vehicle on the date of accident, he has not chosen to file the said policy. The Insurance Company had marked the policy as Exhibit R.1. A perusal of the policy indicates that the policy commences from 07.00 p.m on 11.07.2013 and it extends upto midnight of 10.07.2014. Therefore, on the date of the accident, there was no policy covering the offending vehicle. In such circumstances, the tribunal was not right in relying upon Motor Vehicle Inspector's report to arrive at a finding that there was a policy at the relevant point of time.

9. In view of the above said discussion, the award of the tribunal mulcting the liability upon the Insurance Company is hereby set aside

and the appellant / Insurance Company is exonerated from the liability. This Court has perused the quantum of award passed by the tribunal. Since the same is reasonable, there is no possibility of interfering in the said award. The appeal is partly allowed exonerating the Insurance Company and mulcting the liability upon the 2^{nd} respondent in the appeal who is the owner of the two wheeler. In other respects, the award passed by the tribunal stands confirmed.

10. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.06.2024

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

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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Theni.

2.The Record Keeper,
Vernacular Section,

Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.837 of 2017

14.06.2024