BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.945 of 2017
and
C.M.P(MD)No.9985 of 2017

United India Insurance Company Limited,
No.4/700 V, Thiru Erumpeswarar Nagar,
(Sri Sweets near) New Town Bus Stop,
Trichirapalli-620 013,
Represented by its Divisional Manager,
United India Insurance Company Limited,
Indian Bank Upstairs, South Main Street,
Thanjavur. ... Appellant/2nd Respondent

Vs.

1.R.Arun ... 1st Respondent/Petitioner

2.D.Prabhakaran ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed by the learned Motor Accident Claims Tribunal / II Additional District Judge, Thanjavoor in M.C.O.P.No.391 of 2015, dated 27.08.2015 as against the appellant and allow the appeal.

For Appellant : Mr.N.Dilip Kumar

For R-1 : No appearance
For R-2 : Mr.C.Joseph Sathianeson

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award of pay and recovery in M.C.O.P.No.391 of 2015 on the file of the Motor Accident Claims Tribunal / II Additional District Court, Thanjavur.

2. According to the injured claimant, he was riding a Honda Unicorn bike on 07.03.2015. At about 10.30 a.m., the Hero Honda Splendor Plus two-wheeler owned by the first respondent and insured with the second respondent came from the opposite direction and dashed against the vehicle driven by the claimant. Due to the said impact, the claimant had sustained grievous injuries. The claimant has further contended that the first respondent's vehicle is insured with the second respondent and marked the said policy as Exhibit A.6. Hence, he had prayed for a sum of Rs.12,00,000/- as compensation.

3. The Insurance Company has filed a counter contending that the claimant has to establish the fact that the first respondent's vehicle is insured with the second respondent. The Tribunal after arriving at a finding that there is no subsisting policy on the date of the accident has ultimately directed the Insurance Company to satisfy the award and granted liberty to the Insurance Company to recover the same from the insured person, mainly on the ground that, the Insurance Company has not whispered anything about the non existence of the policy for the previous period or they have not mentioned anything about the date of the proposal form on payment of the premium. The Tribunal has proceeded to award a sum of Rs.1,80,725/-. Challenging the same, the present appeal has been filed.

4. According to the learned Counsel appearing for the appellant, the policy has been taken with the second respondent by the first respondent under Exhibit A.6. The said policy would commence only from the midnight of 08.03.2015. However, the accident has taken place at 10.30 a.m., on 07.03.2015. Therefore, admittedly, there was no policy on the date of the accident. It is for the first respondent to place on record whether he had taken any policy with any other Company covering the date of the accident. The learned Counsel for the appellant had further contended that the pillion rider of the said vehicle, who is the wife of the present claimant had filed M.C.O.P.No.390 of 2015. In the said claim petition, the Insurance Company was exonerated by an order, dated

13.10.2015 by the II Additional District Judge, Thanjavur, on the ground that, there was no subsisting Insurance policy on the date of the accident. Therefore, a different view ought not to have been taken in the present claim petition arising out of the same accident.

5. Though the claimant has been served and his name is printed in the cause-list, there is no representation on the side of the claimant.

6. The learned Counsel appearing for the second respondent / owner of Hero Honda Splendor Plus is not aware of the fact whether they have complied with the award in M.C.O.P.No.390 of 2015.

7. The owner of the offending vehicle, namely, the first respondent in the claim petition has been served with a notice through the Tribunal. However, they have not chosen to appear before the Tribunal and place on record any document to establish that, the vehicle was insured on the date of the accident. However, he has chosen to take a policy with the second respondent with effect from the midnight of 18.03.2015. The accident having taken place at 10.30 a.m., on 07.03.2015, the said policy would not mulct any liability upon the Insurance Company. In such circumstances, the Tribunal was not right in ordering pay and recovery.

8. In view of the above said deliberations, the award of the Tribunal as against the appellant Insurance Company is set aside. The liability is mulcted upon the first respondent in the claim petition. In other respects, the award of the Tribunal stands confirmed.

9. With the above said observations, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

09.07.2024

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

To

1.The Motor Accident Claims Tribunal /
II Additional District Judge,
Thanjavoor.

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

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.945 of 2017

09.07.2024