IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CMA No.3353 of 2014

United Insurance Co. Ltd.,
No.146, N Kumar Complex,
Tiruchengode. ... Appellant

Vs.

1. Madheswaran
2. K.Kumar
3. P.Ramalingam
4. Reliance General Insurance Co. Ltd.,
Gee Jay Arcade First Floor,
No.141/71, Thiruvenkatasamy Road West,
Coimbatore. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2013 made in MCOP No.74 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Court-III, Dharapuram.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Ma.Pa.Thangavel R1
R2 _ Ex-parte
R3- No appearance
Mr.S.Arunkumar - R4

JUDGMENT

The Insurance company has filed the appeal against the judgment and decree dated 19.03.2013 made in MCOP No.74 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Court-III, Dharapuram.

2. The case of the claimant is that on 17.05.2009 at about 8.30 PM, when the first respondent was riding his two wheeler on the Edapadi to Salem Main Road, near Edapadi Government High School to attend his work, at that time, a Mahindra Van driven by the second respondent which was owned by the third respondent, bearing Reg, No.TN 72 V 7151 came from the opposite direction in a rash and negligence manner, hit against the first respondent, due to which, he sustained injuries on his right leg, left cheek, chest, right and left knee and all over his body. It is under these circumstances, the claim petition came to be filed by the first respondent before the Tribunal seeking for payment of compensation for the injuries.

3. The Tribunal on considering the facts and circumstances of

the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car belonging to the second respondent.

4. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.2,22,400/- under various heads.

5. The above compensation was directed to be paid by the appellant Insurance company with interest at the rate of 7.5% per annum.

6. Aggrieved over the same, the appellant has filed the above appeal questioning its liability and quantum of compensation passed by the Tribunal.

7. The learned counsel for the appellant submitted that though the appellant took a specific plea in the counter affidavit before the Tribunal that the insurance policy issued in favour of the second

respondent for a period from 22.06.2009 to 21.06.2010, but the accident had happened on 17.05.2009. At that time of the accident, there was no valid policy for the offending vehicle. Even then, the Tribunal has fastened entire liability on the appellant, which is not sustainable one.

8. The learned counsel further submitted that in order to prove that there was no valid policy at that time of the accident, the appellant has filed the said insurance policies as additional documents viz., Ex.C1 and C2 before this Court.

9. The learned counsel for the claimant submitted that this Court may grant liberty to recover the compensation from the second respondent/owner of the vehicle. It is clear that due to rash and negligent driving of the driver of the car, the accident had happened. After considering the entire fact, the Tribunal has awarded compensation for the injuries, which is perfectly in order and the same does not warrant any interference.

10. Heard the learned counsel for appellant and the learned

counsel for claimants.

11. This Court carefully considered the submissions made on either side and the materials available on record.

12. This Court also carefully went through the award passed by the Tribunal.

13. Though this Court ordered notice to the second respondent , however, he has not appeared either in person or through Advocate before this Court. Hence, the appellant has filed a substitution petition and this Court vide order dated 05.01.2023, granted permission to effect paper publication and the same was effected. Even then, the second respondent has not appeared. Hence, this Court passed ex-parte order as against the second respondent on 23.01.2023. Till date, he has not shown any interest to contest the case.

14. It is the main contention of the insurer/appellant that there was no existing contract of insurance between the the appellant and the

respondent No.2, the owner of the offending car on the date of accident I.e. 17.05.2009. In order to prove the same, the appellant has produced two insurance policies in respect of the offending vehicle before this Court which was marked as Ex.C1 and C2.

15. On perusal of the same, it is seen that the insurance policies had issued between 18.03.2008 to 17.03.2009 and 22.06.2009 to 21.06.2010 but, the accident had happened on 17.05.2009. It came to know that there was no insurance policy at the time of the accident. Hence, the liability fastened as against the appellant is set aside. Consequently, the finding of the Tribunal by fixing the negligence as against the owner of the car is hereby confirmed. Insofar as the compensation is concerned, this Court finds that the quantum fixed by the Tribunal under various heads is reasonable. However, liberty is granted to the first respondent to recover the compensation awarded by the Tribunal from the second respondent in the manner known to law.

16. In the result, the civil miscellaneous appeal is allowed. The appellant is permitted to withdraw the entire amount which was already

deposited. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

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Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No

To

Motor Accident Claims Tribunal, Additional District Court-III, Dharapuram.

M.DHANDAPANI.,J

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