IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.06.2016

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THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.829 of 2011
and
M.P.No.1 of 2011

United Insurance Company Ltd.,
Division - II, R.S.Puram,
Coimbatore - 641 002. ..Appellant/3rd respondent

Versus

1.R.Jayachandran ..1st Respondent/Claimant
2.R.Anand
3.Mrs.R.Amsaveni ..respondents 2&3/Respondents 1&2

(Respondents 2 & 3 were set-exparte in the lower Court)

Prayer: Civil Miscellanies Appeal is filed against the Judgment and decree dated 23.09.2010 passed in M.C.O.P.No.775 of 2008 on the file of the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Coimbatore.

For Appellant : Ms.R.Sreevidhya

For Respondent : Mr.B.R.Shankaralingam for R1

For RR2 and R3 : Set exparte before the lower court

JUDGMENT

Questioning the liability the third respondent/Insurance Company has filed this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The second respondent herein is the driver and the third respondent herein is the owner of the offending vehicle. The first respondent had moved the Claims Tribunal with a claim petition in M.C.O.P.No.775 of 2008, claiming a total sum of Rs.2,00,000/- for the injuries sustained by him in a road traffic accident, which is said to have been taken place on 20.02.2007 at about 11.00 p.m., near Sarvodaya Soap Company, involving a "Honda Activa" two wheeler bearing Registration

No.T.N.38 AB 7562 and an Auto-Rickshaw bearing Registration No.TN 37IT 7963.

3. The appellant/Insurance Company alone had contested the claim. On appreciation of the evidences, both oral and documentary, the Tribunal had proceeded to award a sum of Rs.74,994/-, directing the appellant Insurance Company, to pay this amount along with interest @ 7.5% per annum. The stand taken by the appellant/Insurance Company in their counter statement is that the driver of the vehicle was not having valid driving license. Despite the appellant/Insurance Company had specifically projected their contention on the ground of liability, the tribunal had just ignored their contention and proceeded to award the compensation, fixing liability on the appellant/Insurance Company.

4. Heard, Ms.R.Sreevidhya, learned Counsel appearing for the appellant / Insurance Company and Mr.B.R.Shankaralingam, learned counsel appearing for the first respondent/claimant. The respondents 2 and 3 remained ex-parte before the Tribunal.

5. Since the liability has been disputed by the appellant/Insurance Company, the other aspects such as the negligence and quantum need not be traversed. The first respondent/claimant has claimed that he was working in S.S.Plastic Company, Velandiapalayam, Coimbatore and was getting a monthly salary of Rs.3000/-. He has also claimed that at the time of accident, he was aged about 26 years.

6.Ms.R.Sreevidya, learned counsel appearing for the appellant has admitted that the vehicle bearing registration No. No.T.N.38 AB 7562 was insured. The appellant insurance company had no dispute over this fact. However, the driver of the vehicle was not having valid and effective driving licence at the time of the occurrence and therefore, the owner, who is the third respondent herein had violated the policy condition and as such the Insurance Company was not at all liable to indemnify the loss of the insured.

7. It is to be pointed out that the Insurance coverage of the vehicle is neither disputed nor denied by the appellant Insurance Company. In order to ply the vehicle on road the vehicle must be insured in respect of 3rd party risk. Insofar as, this case is concerned, the 1st respondent/claimant is the 3rd party to the 3rd respondent herein, being the owner of the vehicle. Since, the vehicle was insured with the appellant/Insurance Company at the relevant period, as contemplated Section 149 of Motor Vehicle Act 1988, a duty is cast upon the Insurance Company to satisfy the award against the persons injured in respect of 3rd party risks.

8. In this connection this Court finds that it may be

appropriate to make reference to the decision of the Apex Court in S.IYYAPPAN vs. M/s.United India Insurance Company Ltd., and another 2013 (3) TAC 392 (SC). In this case a Division Bench of the Apex Court has held in para Nos.17 and 18 as under:

> 17. The heading Insurance of Motor Vehicles against Third party Risks given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 & 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances, the insurers right is safeguarded but in any event the insurer has to pay compensation when a valid certificate is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, ii) it was being driven by a person who was not having a duly granted licence, and iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the Insurance Policy.

9. In the light of the observations made in the above said case, this Court is also of view that it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event

there has been violation of any condition of the insurance policy.

10. Keeping in view of the above fact, this Court finds that the injured person being the 3rd party, the insurance company might be directed to pay the award amount to the claimant and it is for the insurance company to proceed against the insurer (owner of the vehicle) for recovery of the amount.

11. Considering the submissions made by Ms.R.Sreevidhya, this Court has confirmed the award of the tribunal and the appellant/Insurance company is directed to pay the award amount to the claimant and recover the amount from the owner of the vehicle through execution proceedings without actually filing any suit for recovery of money.

12. It is brought to the notice of this Court, the award amount was already deposited along with accrued interest and cost and now it is lying in the credit of claim petition in MCOP.No.775 of 2008 on the file of claims Tribunal. Hence, the first respondent/claimant is permitted to withdraw the entire award amount along with the accrued interest without filing any formal application seeking permission. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Motor Accident Claims Tribunal,
(III Additional Subordinate Judge),
Coimbatore.

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr.B.R.Shankaralingam, Advocate Sr.35383
+ 1 cc to Ms. R. Sreevidya, Advocate SR.35747

C.M.A.No.829 of 2011
and
M.P.No.1 of 2011

KJI(CO)
EU 25.11.16