

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.431 of 2009

and MP.No.1 of 2009

Cholamandalam MS General Insurance Co. Ltd.,
Car House, 2nd Floor, NSC Bose Road,
Chennai - 1. ... Appellant

Vs.

1.Gurusamy, S/o.Chinnappan

2.A.Karthik, S/o.Arumugam ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.67 of 2006, dated 27.03.2008 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Mettur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Pushpakaran [for R1]
R2 - Ex parte

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the Insurance Company, who is arrayed as second respondent before the Tribunal.

2. Heard Mr.N.Vijayaraghavan, the learned counsel appearing for the appellant and Mr.S.Pushpakaran appearing for the first respondent.

3. Claim petition in MCOP.No.67 of 2006 was laid before the Motor Accident Claims Tribunal, Subordinate Court, Mettur by one Gurusamy, who suffered permanent disability in road accident that took place on 04.03.2006 at about 6.30 p.m. when he was hit by a motor cycle bearing TN30-V-4678. The claimant/first respondent made a demand for Rs.2,00,000/- as compensation and the Tribunal by the impugned order has awarded him Rs.71,300/- with interest @ 7.5% per annum.

4. One of the defences taken by the Insurance Company is that the first respondent (second respondent herein) has no driving licence at that relevant time, that it is a violation of policy condition and consequently no liability can be fastened on the Insurance Company. As already indicated the Motor Accident Claims Tribunal has made its award as stated above, but as to the contention of the Insurance Company, it did find that the first respondent before the Motor Accident Claims Tribunal has no valid licence, but still passed the award directing the Insurance Company to pay the compensation award and to recover the same from the owner of the vehicle.

5. The learned counsel for the appellant submitted that the only point the appellant has raised in this case relates to its objection to the doctrine of pay and recover as has been juridicially evolved. However, this controversy has been settled vide a decision of this Court in **Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & Others [2012(1) TN MAC 394 (DB)]**. Hence, this Court finds no merit in the appeal and the same is dismissed with a direction to the Insurance Company to deposit the amount awarded, less any amount if any, already deposited in Court within six weeks from today. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To:

The Motor Accident Claims Tribunal
Subordinate Court,
Mettur.

Copy to:

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

C.M.A.No.431 of 2009

SK [CO]

MSI 29/12/2016