IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2016
CORAM
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.3100 of 2013

United India Insurance co., Ltd.,
No.73-C, M.T.H.Road,
Ambattur, Chennai-53. .. Appellant/2nd Respondent

.Vs.

1.Saranraj ..1st Respondent/Petitioner
2.Thajudeen ..2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 03.12.2012 and made in M.C.O.P.No.710 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Judge) Ponneri.

For petitioner : Mr.S.Arunkumar
For R1 : Mr.T.P.Sekar

O R D E R

Questioning the liability, the appellant/Insurance company has filed this appeal under section 173 of the Motor Vehicles Act, 1988.

2. As it is revealed from the records the first respondent being the claimant had moved the Motor Accident Claims Tribunal with a claim petition in MCOP.No.710 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Judge) Ponneri, claiming a sum of Rs.3,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 07.07.2009 at about 12.30 hrs, involving a motor cycle bearing Registration No.TN.09.L.5275.

3. While the first respondent being the owner of the offending vehicle remained exparte, the appellant-Insurance Company being the second respondent in the claim petition had taken a plea saying that the rider of the motor cycle bearing Reg.No.TN.22.6216 was not having any valid and effective driving licence to drive the vehicle at the relevant period. The appellant had also contended that since there was a clear violation of policy condition, the Insurance company was not at all liable to pay compensation.

4. The learned counsel for the appellant-Insurance Company has invited the attention of this Court to paragraph-10 of the

award, wherein, the Tribunal has observed that the main contention of the second respondent (appellant) that the driver of the offending vehicle was not having valid driving licence to drive the motorcycle and to substantiate their stand, the appellant had examined RW1. RW1 has also spoken that the driver was not having any valid driving licence as per RTO records. In this connection, the Tribunal has observed that the driver of the vehicle might have taken the licence at any other RTO office and therefore, the evidence of RW1 could not be relied upon as the charge sheet (Ex.P5) discloses that the accused had not been charged for the offence of non possession of valid driving licence. The Tribunal has also observed that the owner and the insurer viz., R1 and R2 are jointly and severally liable to pay compensation.

5. The observation made by the Tribunal at Paragraph No.10 is not acceptable, because the appellant-Insurance Company had made all efforts to substantiate their contention that the driver of the offending vehicle was not having valid driving licence at the relevant period. The letter from competent authority (RTO) Ponneri, was marked as Ex.R1 through RW1. Without considering the evidence of RW1 as well as Ex.R1, the Tribunal had wrongly observed that the driver of the offending vehicle might have taken licence from some other RTO and only on this ground, the evidence of RW1 was rejected by the Tribunal.

6. However, ignoring the contention made by the appellant-Insurance Company, the claims tribunal had proceeded to fix the liability with the appellant Insurance company, as the motorcycle bearing Registration No.TN.22.Z.6216 was insured with them at the time of occurrence.

7. On the other hand, Mr.S.Arunkumar, learned counsel for the appellant has drawn the attention of this Court to the decision of the Apex Court in S.IYYAPPAN vs. M/s. United India Insurance Company Ltd and another, Civil Appeal No.4834 of 2013 dated 1st July 2013, wherein Hon'ble Mr.Justice M.Y .Eqbal in paragraph Nos.17 & 18 has observed as under:

> Para17: The heading Insurance of Motor Vehicles against Third party Risks given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 10=939 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.
>
> Para.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 insurance policy.

8. In this appeal, the liability alone is questioned. In the light of the observations made by the Apex Court, this Court is of view that the Insurance Company may be directed to pay the award amount to the claimant and reimburse the same from the second respondent/owner of the vehicle at the later stage through an execution proceedings without actually filing any suit for recovery of money.

9. Accordingly, the appellant-Insurance company is directed to pay the award amount with the interest at the rate of 7.5% p.a.within a period of four weeks from the date of receipt of a copy of this order and the appellant insurance Company is at liberty to proceed against the insured who is the second respondent herein for recovery of the amount by execution proceedings without actually filing any suit for recovery of money.

10. With the above observation, this appeal is partly allowed. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

To
The Motor Accident Claims Tribunal
(Sub Judge) Ponneri.

+1 cc to Mr.S.Arunkumar, Advocate,sr.35134

+1 cc to Mr.T.P.Sekar, advocate,sr.35045

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