

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2016

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2122 of 2003

The Manager,
National Insurance Co. Ltd.,
Sangagiri Branch Office,
Bhavani Road,
Sangagiri - 637 301.

... Appellant/2nd Respondent

Vs.

1.Jayaraj 1st Respondent/Petitioner

2.M.Chiththan2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.1258 of 1999 dated 19.05.2003 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.I, Salem.

For Appellant :Mr.N.Vijayaraghavan

For Respondents :No Appearance

JUDGMENT

It is the case of a pedestrian Vs. motor cycle. On 24.6.1997, at about 11.am., the claimant was walking along the road, when motor cycle bearing registration No.TM-6310 belonging to the second respondent and stated to be insured with appellant, had knocked down the claimant owing to which, he suffered fractures to his left angle, besides other lacerated injuries. The claimant was stated to be a tailor.

2. The defence of the Insurance Company was two-folded:

- a. that there was no insurance cover for the vehicle
- b. that the rider of the motor cycle did not possess a valid driving licence.

3. During enquiry, the appellant/Insurance Company did not produce the insurance policy, but attempted to prove the same through the oral testimony of R.W.1 & R.W.2 to the effect that the policy indicated in the claim petition was obtained subsequent to the accident. The Tribunal took an adverse inference against the appellant for not examining its agent, and the premium amount that might have been paid to him. To this, it may be added that the Insurance Company too has not produced the policy of the insurance to substantiate his contention. So far

as its defence as to absence of valid and effective licence of the motor cycle is concerned, the said point does not appear to have been thrust before the Tribunal. Considering the nature of injuries and the avocation of the claimant as tailor, and taking into account the permanent disability as was medically assessed at 25% percent, the Tribunal granted a compensation Rs.25,000/- towards permanent disability. After providing compensation for the general heads of non-pecuniary damages, the Tribunal passed an award for RS.45,844/- payable with interest @ 9% per annum as against the claim of Rs. 1,00,000/-

4. Heard the learned counsel appearing for the appellant and perused the materials available on records.

5. One of the defences taken by the Insurance Company is that the first respondent before the Tribunal 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.

6. 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 the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To :

1.The Additional District Judge,
Motor Accidents Claims Tribunal
Fast Track Court -I,
Salem.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.72950

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GP (CO)
GN(15/09/2017)



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