

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CMA.No.3699 of 2004
and WMP.No.19895 of 2004

The New India Assurance Co. Ltd.
Namakkal.

..Appellant/2nd Respondent

Vs.

1.S.Muthusamy

..1st Respondent/Petitioner

2.S.Mani

..2nd Respondent/Respondent

Prayer : Civil Miscellaneous Appeal preferred against the judgment and decree dated 31.12.2003 in MCOP.No.1020 of 2004 on the file of the Motor Accidents Claims Tribunal and Additional District Court (Fast Track Court No.III) at Namakkal.

For Appellant : Mr.S.Ramalingam

For Respondents: Ms.G.Thilakavathy [for R1]
R2 - No appearance

JUDGMENT

The Insurance Company of the offending vehicle in a motor accident that had taken place on 03.05.2001 has come forward with this appeal on the question of liability.

2. The essence of the case is that the claimant was riding his TVS moped along Jedarpalayam Village to Solasiriamani, Namakkal District, when a tempo van bearing No.TN28-A-5819 knocked it, in which the claimant suffered injuries. On various heads, the claimant sought a total compensation of Rs.5,00,000/-, against which the Tribunal had passed an award for Rs.75,000/- with 9% interest per annum.

3. The learned counsel for the appellant raised a solitary point. In the counter filed before the Tribunal, the appellant has taken up a contention that the identity of the driver who drove the tempo van at the time of accident was in doubt. Whereas the claimant contended in his petition the driver of the tempo van at that relevant time was Annadurai alias Duraisamy. The appellant's investigation discloses that the said Duraisamy had driven the vehicle and that he did not possess any driving licence. The learned counsel further added that he had examined R.W.1, the Regional Transport Officer, who had deposed that the said Duraisamy only had a licence to drive light motor vehicles

and not a goods carrier and that to drive a goods carrier he needed to take a badge. Hence there is violation.

4. The law of this branch is settled as of today. In Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & Others [2012(1) TN MAC 394 (DB)], the Hon'ble Division Bench has held that in cases such as one that the Insurance Company is liable to pay the compensation at the first instance and recover the same from the insured subsequently.

5. Accordingly, the appeal is partially allowed and the liability of the Insurance Company is partially modified in that it shall be liable to pay the award amount at first instance and then it may recover the same from the owner of the vehicle. The learned counsel for the appellant submitted that the entire award amount has been deposited and 50% of the same has been withdrawn by the claimant. The claimant is entitled to withdraw the balance 50% of the award amount along with accrued interest now lying in the Court deposit forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To:

The Motor Accident Claims Tribunal
Additional District Court,
Fast Track Court No.III
Namakkal.

Copy to:

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

CMA.No.3699 of 2004

ppa (co)
ss(11/9/2017)