



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A. (MD) Nos.1407,1408 and 1409 of 2015

and

M.P. (MD) .Nos.1,1 and 1 of 2015

C.M.A. (MD) Nos.1407 of 2015:

IFFCO TOKYO General Insurance
Company Ltd.,
Tulsi Chambers,
3rd Floor, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

.. Appellant / 2nd Respondent

Vs.

1.R.Karppukarasi
2.P.Murugesan

..1st Respondent / Petitioner

..2nd Respondent / 1st Respondent

C.M.A. (MD) Nos.1408 of 2015:

IFFCO TOKYO General Insurance
Company Ltd.,
Tulsi Chambers,
3rd Floor, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

..Appellant / 2nd Respondent

Vs.

1.Balasubramanian
2.P.Murugesan

..1st Respondent / Petitioner

..2nd Respondent / 1st Respondent

C.M.A. (MD) Nos.1409 of 2015:

IFFCO TOKYO General Insurance
Company Ltd.,
Tulsi Chambers,
3rd Floor, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

..Appellant / 2nd Respondent

Vs.

1.Minor Vengatesh
2.P.Murugesan

..1st Respondent / Petitioner

..2nd Respondent / 1st Respondent

Common Prayer:- Appeal filed under Section 173 of Motor Vehicle Act, against the fair and decretal order dated 26.08.2010 and made in MCOP.No.120 of 2008, MCOP.No.121 of 2008 and MCOP.No.122 of 2008 respectively, on the file of the Motor Accidents Claims Tribunal, Kulithalai.

For Appellant : Mr.S.Srinivasa Raghavan
in all cases

For Respondents : Mr.N.Sudhagar Nagaraj
For R1 in all cases

Mr.S.Ramasamy
For R2 in all cases.

**COMMON ORDER**

The common order dated 26.08.2010 and made in the claim petition in M.C.O.P.Nos.120/08,121/08 and 122/08, on the file of the Motor Accident Claims Tribunal, Kulithalai are under challenge in these memorandums of Civil Miscellaneous Appeals.

2. With the issue involved in all the three appeals is one and the same, they have been consolidated together, heard jointly and disposed of in this common judgment.

3. The appellant insurance company in the above appeals is the second respondent in all the claim petitions. The first respondent in all the appeals are the claimants in the respective claim petitions in MCOP.120/08, 121/08 and 122/08, whereas the second respondent in these appeals is the first respondent/owner of the vehicle in all the claim petitions.

4. All the claimants had moved the Claims Tribunal, Kulithalai with the above said claim petitions, claiming a sum of Rs.20,000/-, Rs.5,00,000/- and Rs.20,000/- respectively, for the injuries sustained by them in a road traffic accident said to have been taken place on 04.10.2007, involving a motor cycle bearing registration No.TN-28K-3172 belonging to the second respondent herein.

5. In all the claim petitions, the second respondent herein, being the owner of the vehicle remained ex-parte. The appellant insurance company being the second respondent therein alone had contested the claim of the claimants. The claim petitions were arising out of one and the same accident said to have been taken place on 04.10.2007 and since all the claimants had sustained injuries in the said accident, the above said three claim petitions were consolidated together and tried jointly. On evaluating the evidence available on record, the claims tribunal had proceeded to pass the common award dated 26.08.2010 as detailed under;

- " (i) In MCOP.120 of 2008 a sum of Rs.12,000/- was awarded.
- (ii) In MCOP.121 of 2008, a sum of Rs.1,11,000/- was awarded.
- (iii) In the claim in MCOP.122 of 2008, a sum of Rs.10,000/- was awarded".

6. The second appellant insurance company being the second respondent in the claim petitions was directed to deposit the above said amounts with interest at the rate of 7.5 % per annum from the date of claim petition within a period of 30 days.

7. The Tribunal had also directed the appellant insurance company to pay the above said awarded amounts and then recover from the first respondent. The tribunal has also observed that in the execution proceedings, it is open to the first respondent/owner of the vehicle to prove that the rider did possess a licence. In that event the second respondent shall not be entitled to recover.



8. Based on the award dated 26.08.2010, a decree was also drafted. In the said decree in clause 6 it is stated as follows;

"6. the second respondent shall pay the amount and then recover from the first respondent. In the execution proceedings, it is open to the first respondent to prove that the rider did possess a licence. In that event the second respondent shall not be entitled to recover".

9. Having been aggrieved by clause 6 of the decree the appellant/insurance company has preferred the above said Civil Miscellaneous Appeals.

10. What Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant insurance company would contend is, that the tribunal ought not to have fastened the liability with the appellant insurance company to compensate the claimants at the first instance and to recover the same from the owner of the vehicle, especially for the reason that the owner of the vehicle had committed a basic and fundamental breach of the terms and conditions of the policy of insurance.

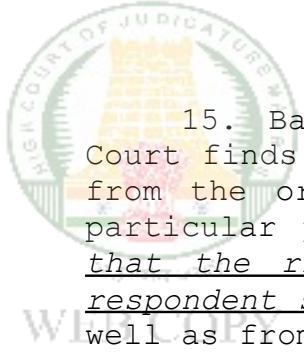
11. Mr.S.Srinivasa Raghavan, has also indicated that the defence of the appellant insurance company viz., absence of driving licence and the violation of the conditions of the policy of insurance were proved satisfactorily and hence the tribunal ought to have absolved the liability of the insurance company to indemnify the loss of the owner of the vehicle. Particularly with reference to clause 6 of the decree Mr.S.Srinivasa Raghavan has submitted that the tribunal ought not to have directed the appellant/second respondent to satisfy the award in favour of the claimants at the first instance and to recover the same from the owner of the vehicle by launching appropriate proceedings.

12. Mr.S.Srinivasa Raghavan has mainly challenged the clause 6 of the decree. Again this Court is taking the risk of repetition by extracting clause 6 of the decree as under;

"6. the second respondent shall pay the amount and then recover from the first respondent. In the execution proceedings, it is open to the first respondent to prove that the rider did possess a licence. In that event the second respondent shall not be entitled to recover".

13. The specific direction given by the tribunal in clause 6 that it is open to the first respondent to prove that the rider did possess a licence and in that event the second respondent shall not be entitled to recover alone has been attacked mainly. The learned counsel has urged to set aside the particular portion and to allow this appeal.

14. In fact Mr.S.Srinivasa Raghavan has conceded with the direction of the tribunal to pay the award amount to the claimants later and later to recover the same from the owner of the vehicle by way of execution proceedings without actually filing the suit for recovery of money. But after the completion of the operative portion of the judgment, the it is open to the first respondent to prove that the rider did possess a licence and in that event the second respondent shall not be entitled to recover.



15. Based on the statement made by Mr.S.Srinivasa Raghavan, this Court finds that to meet the ends of justice, this particular observation from the order as well as the decree is to be removed. Therefore the particular portion, i.e., "It is open to the first respondent to prove that the rider did possess a licence and in that event the second respondent shall not be entitled to recover" is removed from the order as well as from the clause 6 of the decree.

16. Accordingly, the order and decree are modified. With this modification, these Civil Miscellaneous Appeals filed by the appellant/insurance company are allowed. However, the award passed by the tribunal and other aspects remains intact. No Costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Kulithalai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR No.1551

C.M.A. (MD)No.1407,1408 and 1409 of 2015 and
M.P. (MD) .Nos.1,1 and 1 of 2015
06.01.2016

PJL
SH/SKS-RR:10.03.2016:4P/3C