

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1357 of 2011

C.Shanmugam

.. Appellant

Vs.

1. R.Kuilsamy
2. C.Palanisamy
3. M/s.Iffco Tokiyo General Insurance Company Ltd.,
'Tulsi Chambers',
3rd Floor, 195, T.V.Samy Road West,
Coimbatore-641 002. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Fair and Final order in MCOP.No.944 of 2007, dated 24.10.2008 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Judge, Coimbatore.

For Appellant : Mr.B.Nedunchezhiyan
For 1st Respondent : Mr.M.Mariappan
For 2nd Respondent : Mr.G.B.Saravanabhavan
R3 : Served No Appearance

JUDGMENT

In a road accident involving two motor cycles, the rider of the motor cycle was suffered injury due to which he has approached the Tribunal with a claim of Rs.5,00,000/- as compensation. As against this claim, the Tribunal has awarded Rs.1,53,350/- as compensation. The offending vehicle involved, as already indicated a motor cycle, belonged to the 2nd respondent and was insured with the 3rd respondent.

2. Before the Tribunal, the insurance company took up the plea that the 1st respondent/rider of the offending motor cycle at the relevant time has not possessed with a valid and effective driving licence. This defence was accepted by the Tribunal and observed the insurance company is not liable for payment of compensation.

3. Heard Mr.B.Nedunchezhiyan, the learned counsel appearing for the appellant and Mr.M.Mariappan appearing for the first respondent and Mr.G.B.Saravanabhavan appearing for the second

respondent

4. The learned counsel for the appellant submitted that the certificate of valid and effective driving licence is only a policy violation and it is a fit case where pay and recovery should have been applied. 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)] whereby doctrine of pay and recover can be applied to cases of violation of policy condition. Accordingly, this Court holds that the 3rd respondent is liable to pay the compensation amount at the first instance which it can recover from the 2nd respondent subsequently.

5. Accordingly, this Civil Miscellaneous Appeal is allowed. The Insurance Company is directed to deposit the award amount of Rs.1,53,350/- with interest at 7.5% p.a. less any amount if any, already deposited in Court within six weeks from the date of receipt of a copy of this order, whereupon the claimant/appellant would be entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ssn

To:

The Motor Accident Claims Tribunal
Principal SubJudge,
Coimbatore.

+1 Cc to Ms.B. Nedunchezhiyan, Advocate sr 54804.

+1 CC to Ms.G.B. Saravanabhavan, Advocate sr 54871.

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SS(CO)

sp(27/10/2017)