

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1372 of 2011

M.Ramasamy

.. Appellant/Petitioner

Vs.

1. R.Rajendran

2. M/s.ICICI Lombard Motor Insurance Company Ltd.,
ICICI Bank Towers,
Bandra-Kula Complex,
Bandra (East),
Mumbai-400 051. .. Respondents/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.457 of 2008, dated 30.07.2009 on the file of the Motor Accidents Claims Tribunal cum Additional District Sessions Judge, Fast Track Court, No.1, (in-charge), Coimbatore.

For Appellant : Mr.B.Nedunchezhiyan
For ^{1st} Respondent: Mr.G.B.Saravanabhavan
R2 : No appearance

JUDGMENT

In a road accident involving a two wheeler and a delivery van, the rider of the motor cycle suffered injury for which he has approached the Tribunal with a claim of Rs.2,00,000/- as compensation. As against this claim, the Tribunal has awarded Rs.42,150/- as compensation.

2. The offending vehicle involved as already indicated is a van and it belonged to the 2nd respondent and was insured with the 3rd respondent.

3. Before the Tribunal, the insurance company took up the plea that the 1st respondent/rider of the offending vehicle van at the relevant time did not possess a valid and effective driving licence. This defence was accepted by the Tribunal and absolved the insurance company of the liability to pay the compensation.

4. Heard Mr.B.Nedunchezhiyan, the learned counsel appearing for the appellant and Mr.G.B.Saravanabhavan appearing for the second respondent. The learned counsel for the appellant submitted that absence of a valid and effective driving licence is only a violation of policy condition which should not be equated to cases of want of insurance cover, and that it is a fit case where doctrine of pay and recovery should have been applied.

5. 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)] where it is held that in cases of violation of policy condition doctrine of pay and recovery can be applied. Accordingly, this Court holds that the 2nd respondent is liable to pay the compensation amount if not paid by the 1st respondent at the first instance and then to recover the same from the 1st respondent.

6. Accordingly, this Civil Miscellaneous Appeal is allowed. The Insurance Company is directed to deposit the award amount of Rs.42,150/- 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. It may thereafter realise it from the insured. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssn

To:

1.The Motor Accident Claims Tribunal
Additional District Sessions Judge,
Fast Track Court, No.1, (in-charge),
Coimbatore.

+1 cc to Mr.G.B.Saravanabhavan Advocate sr 54872

+1 cc to Mr.B.Nedunchezhiyan Advocate sr 54803

C.M.A.No.1372 of 2011

aa20/12/2017