IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2243 of 2016
and
C.M.P.Nos.15897 of 2016 and 4183 of 2017

United India Insurance Co.Ltd.,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7. .. Appellant/II Respondent

/Vs/

1. Vadivel ..1st Respondent/Petitioner
2. C.Mani ..II Respondents/I Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.06.2016 made in M.C.O.P.No.1147 of 2012 on the file of the Motor Accident Claims Tribunal (Spl.District Court) at Salem.

For Appellant : Mr.T.Ravichandran
For Respondent No.1 : Mr.C.Richard Suresh Kamal
For Respondent No.2 : No appearance

JUDGMENT

The claimant, P.Vadivel, aged about 45 years, earning a sum of Rs.6,000/- per month met with an accident on 26.07.2012 in which he sustained injuries. Therefore, he filed a claim petition claiming compensation of Rs.10,00,000/-.

2. The Tribunal, on considering the oral and documentary evidence, passed an award for a sum of Rs.5,39,000/-, the break up of which is as under:-

Future loss of earnings	Rs.5,04,000/-
Loss of Love and affection	Rs. 10,000/-
Funeral expenses	Rs. 25,000/-
Total	Rs.5,39,000/-

3. While passing the award, the tribunal directed the Insurance company to pay compensation with right to recover the amount from the owner of the vehicle, viz., the 2nd respondent herein. Challenging the order passed by the claims tribunal, the Insurance company has filed this appeal.

4. The main contention raised by the Insurance company is that the tribunal ought to have exonerated the insurance company from the liability to pay the compensation. In other words, the contention is that the appellant Insurance company is not at all liable to pay any compensation. The main ground on which such a contention is raised by the insurance company seeking complete exoneration is that the driver of the vehicle did not have a valid driving license to drive the said class of vehicle at the time of accident and that the offending vehicle was not having a valid fitness certificate to ply on the road at the time of accident.

5. To substantiate the above contentions, the Insurance company relied on the evidence of the Motor Vehicle Inspector, who has deposed that the offending vehicle viz., TN 33 AW 3848 Maruthi Omni was not having any endorsements and that the vehicle did not have valid fitness certificate. The substantial evidence is that the badge expired on 20.02.2012 but that accident took place five months thereafter i.e., on 26.07.2012 and therefore, on that date, there was a no valid fitness certificate. It is also stated that the permit expired on 04.02.2012. Admittedly, non-availability of requisite fitness certificate would absolve the insurer of its liability as per the conditions of the policy.

6. The Tribunal relied upon the decision reported in 2015 (2) TN MAC 660 (E.Manoharan and another Vs. Suresh and another), wherein, it is held that want of fitness certificate, may be a breach of terms and conditions of the insurance policy. However, the for said breach the claimant/victim cannot be made to suffer and it is for the Insurance Company to pay the compensation and recover the same from the owner of the vehicle. This Court is of the considered view that the finding rendered by the Tribunal is fair and proper and on the touchstone of legal precedents and is not liable to be interfered with.

7. Insofar as the contention relating to want of driving license to drive the specified vehicle is concerned, it has now been held by the Supreme Court that "A transport vehicle and omnibus, the gross vehicle weight of either of which did not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, unladen weight' of which did not exceed 7500 kg. and holder of a driving licence to drive class of light motor vehicle as provided in Section 10(2) (d) was competent to drive a transport vehicle or omnibus, the gross vehicle weight of which did not exceed 7500 kg. or a motor car or tractor or road-roller, the unladen weight of which did not exceed 7500 kg. No separate endorsement on the licence was required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10 (2) (d) continues to be valid after amendment."

8. Therefore, applying the law laid down by the Supreme Court to the case on hand, it is borne out by record that the driver of the vehicle was possessed of driving licence to drive the class of vehicle. In such circumstances, so far as fitness is concerned, the Tribunal has appreciated the entire materials on record and has passed the order directing the insurer to pay the compensation to the claimant and, thereafter, granted to the insurer the right to recover the same from the owner of the vehicle. In such view of the matter the order passed by the Tribunal is fully justified in the facts and circumstances of the case. Therefore, the contention of the learned counsel for the Insurance company to exonerate the Insurance company completely from the liability cannot be done. Accordingly, the order passed by the Tribunal deserves no interference and, accordingly, the same is confirmed.

9. The appeal, being devoid of merits, deserves to be dismissed and, accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10. It is represented that the entire award amount, as determined by the Tribunal, has already been deposited by the Insurance Company as per the order of this court dated 07.10.2016. The Tribunal is directed to transfer 50% of the award amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter. Insofar as the balance 50% of the award amount is concerned, the same shall kept in deposit in any one of the nationalized banks initially for a period of three years and the claimant is permitted to withdraw the interest accruing thereon once in three months.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sms/GLN
To
The Motor Accident Claims Tribunal
(Spl.District Court), Salem.
+ 1 cc to Mr.T. Ravichandran, Advocate Sr.64310
+ 1 cc to Mr.C. Richhard Suresh Kamal, Advocate Sr.64728

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SKS(CO)
EU(02/04/2018)