

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2807 of 2011
and MP.No.1 of 2011
and CMP No.2268 of 2016

ICICI Lombard Insurance Co. Ltd ...Appellant/Respondent No.2

Vs.

1.S.Poosa ...R1/Petitioner
(R2 set exparte in the Lower Court)
2.A.Prasad ... R2/R1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.07.2009 made in MCOP.No.309 of 2006 on the file of the Motor Accident Claims Tribunal (Fast Track IV Court), Ponneri.

For Appellant : Ms.R.Sreevidya

For Respondents : Mr.Terry Chellaraja
for Mr.Devendran [for R1]
R2 - Exparte

JUDGMENT

This appeal is preferred by the Insurance Company (second respondent before the Tribunal), challenging the award passed in MCOP.No.309 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV (Additional District Judge), Ponneri. By the impugned award, the Insurance Company is made jointly and severally liable along with the owner of the vehicle to pay compensation of Rs.1,80,500/- with interest @ 7.5% per annum payable to the victim/injured in a road accident that took place on 04.03.2006. It was a case of motor cycle knocking down a pedestrian.

2. The learned counsel for the appellant raised a solitary point that the rider of the motor cycle at that relevant time had no driving licence and in a situation such as that, the Tribunal ought to have only applied the doctrine of "pay and recover" rather than fastening the liability simultaneously on the Insurance Company along with the owner of the vehicle.

3. The Tribunal in arriving at its conclusion on the issue raised by the appellant has held that P.W.1, the investigator of the Insurance Company has not interrogated either the owner or the rider of the motor cycle in question before arriving at its conclusion, might not be merit in the contention of the Insurance Company that the rider of the motor cycle might not have driving licence. In this context, the learned counsel for the appellant brought to the notice of the Court Ext.P4, the Inspection Report of the motor vehicle wherein, the Motor Vehicle Inspector has noted that the driver's driving licence has not been produced. The learned counsel however contended that while law has given an option under Section 170 of the Motor Vehicle Act to raise such objection in defence which the owner might have had an opportunity to raise whether the owner either remains exparte or colludes with the claimant, still it is difficult for the Insurance Company to bring all the details that would help the Court, and the owner had the minimum role to inform the Court about the driving licence particulars of rider. After all, it is his motor cycle and he ought to know who the rider was and if he had any driving licence. It is within the personal knowledge of the owner and when he does not appear to inform the minimum materials which are in his possession and then adverse inference shall be taken.

4. I find merit in the submission of the learned counsel for the appellant. The driving licence can be obtained from any where and the owner of the vehicle should atleast provide some information regarding the driving licence particulars of the rider of his motor cycle. I therefore find reasons enough to hold that the rider of the motor cycle might not have a valid driving licence at the time of accident. In this circumstances, it is only appropriate to apply doctrine of "pay and recovery".

5. In the result, the appeal is partially allowed and the Insurance Company is directed to pay the compensation amount at the first instance and then it is free to recover the same from the owner of the vehicle in the same proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

6. The learned counsel for the appellant submitted that the entire compensation amount has already been deposited in the Court. Inasmuch as the compensation amount has already been deposited, I permit the claimant to withdraw the same with all accrued interest forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
(Fast Track IV Court), Ponneri.

+1cc to Mrs.R.Sreevidhya, Advocate Sr.3931

+1cc to Mr.A.Devendran, Advocate Sr.3484

CMA.No.2807 of 2011

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srg 27/02/2017

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