

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.2922 of 2011

M.P.No.1 of 2011

United India Insurance Co., Ltd.,
Branch Office,
RPR Complex, Bye Pass Road,
Opp. Govt. Hosiptal,
Dharmapuri - 636 701.

... Appellant/2nd Respondent

Vs.

1. Sidheshwaran

2. The Joint Director,
Medicine & Health for Family Welfare,
Krishnagiri.

... Respondents/Petitioner
and 1st respondent

Prayer:- Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 03.01.2011 made in M.C.O.P.No.63 of 2009 on the file of the MACT (Sub Court) at Hosur.

For Appellant : Mr.T.Ravichandran

For Respondents :

For R1 Mr.S.Lakshmanasamy

For R2 No appearance

JUDGEMENT

In a road accident that took place on 03.01.2009 at about 8.00 a.m., an ambulance bearing registration No. TN24 G 0091, under the service of the first respondent and insured with the appellant, dashed against the claimant while he was riding his motor cycle, due to which the rider of the bike suffered injuries. For the injuries he had suffered, the victim moved the Tribunal with a claim of Rs.7,00,000/- (Rupees seven lakhs only) and on evaluating the evidence, it passed an award for Rs.2,79,500/- (Rupees two lakhs seventy nine thousand and five hundred only) with a direction that both the owner and the

insurer of the ambulance should pay the same with interest at 7.5% p.a. This award is now under challenge.

2. The learned counsel for the appellant argued that the ambulance in question that was insured with it did not have a fitness certificate as on the date of accident and consequently there was violation of one of the conditions of policy and therefore, the Tribunal ought to have applied the doctrine of pay and recovery in this case.

3. Per contra, the learned counsel for the claimant would argue that the insurance company has not pleaded any policy violation in its counter.

4. Replying to the aforesaid argument, the learned counsel for the appellant took this Court through the evidence of R.W.2., in which the witness has deposed that the vehicle was not issued with a fitness certificate by the R.T.O. Office, Hosur as on the date of accident. In the cross examination it was suggested to the said witness if he knew about any fitness certificate that might have been issued by the R.T.O. Office, Krishnagiri, and the witness replied that he did not know about the same. The learned counsel for the appellant therefore argued that admittedly there was no certificate issued by the R.T.O. Office, Hosur that the vehicle in question was registered and if it is the case of the claimant or even the first respondent before the Tribunal that the fitness certificate was obtained from any other Registration Office, the burden is solely on the claimant to prove the same.

5. On proper assessment on the rival submissions, this Court finds that there was no pleading to the effect that the ambulance had a Fitness Certificate on the date of accident. Further, the obligation of the insurance company to meet liability arises out of use of vehicle on the public road, governed solely by the contract of insurance, and if a question arises whether there was any violation of policy condition, the initial burden is on the insurance company to provide the facts concerning it, and once it is so provided, the burden shifts to the insured/the owner of the vehicle to provide necessary particulars to disprove the same. The owners of the vehicles as a class are not only prone to be irresponsible either consciously or negligently in flouting conditions of contract of insurance, but also consider that they are exempted from the process of the Court, and would stay away from appearing before the Court to explain the facts that are in their possession. They are also believed to receive such advices that nurtures their belief that they have no role to play in an action before the Court seeking compensation, that primarily commences with their use of the vehicles in public roads. Courts are not expected to convert a beneficial legislation into a charitable

legislation, and are duty bound not load all odds against one of the litigants before it. An owner of the vehicle who ignored or forgot his duty to the court in not aiding it with facts that are necessary for it to appreciate the facts that the insurance company places before it, deserves contempt and not compassion from this Court. He will now pay. However, since it is a case of violation of policy condition, the doctrine of 'pay and recover' can be applied. Refer: Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & others [2012(1) TN MAC 394(DB)].

6. Accordingly, this Court allows this appeal and the appellant is directed to pay the compensation amount determined by the Tribunal at the first instance and thereafter, can recover the same from the second respondent in this appeal.

7. The learned counsel for the appellant submitted that the entire award amount has already been deposited by the appellant with interest. Hence, the claimant is permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

rts

To

1. The Motor Accident Claims Tribunal (Sub Court),
Hosur.

+1 Cc to Ms. T. Ravichandran, Advocate sr 55144.

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SAI (CO)
sp(27/09/2017)