IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.616 of 2017
and C.M.P.No.3598 of 2017

The National Insurance Co. Ltd.,
First Floor, Karthikeya Complex,
Mettur Road,
Bhavani. ... Appellant / 2nd respondent

versus

1. S.Gurusamy ... 1st respondent / Petitioner
2. Kesavamoorthy ... 2nd respondent/1st respondent
3. V.E.Eswaramoorthy ... 3rd respondent/3rd respondent
4. The New India Assurance Co. Ltd. Gopi. ... 4th respondent/4th respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.04.2012 made in M.A.C.T.O.P.No.644 of 2010 on the file of the Motor Accident claims Tribunal, Subordinate Judge, Sathyamangalam.

For Appellant : M/s.M.B.Chaitanya

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the National Insurance Company Limited, challenging the liability.

2. In the claim petition filed in M.C.O.P.No.644 of 2010, the National Insurance Company Limited is the second respondent and the New India Assurance Company is the fourth respondent.



3. The claimant filed the claim petition claiming compensation of Rs.5,00,000/- in respect of the injuries sustained by him in an accident that took place on 10.05.2010.

4. It was the case of the claimant that the TATA ACE van, which was driven by its driver in a rash and negligent manner, hit against him, in respect of which, he sustained grievous injuries over the head, shoulder and other places. He was aged 37 years at the time of accident. There was loss of earning capacity and loss of income on account of permanent disablement suffered by him. The Doctor certified the disability at 32%. The Tribunal awarded compensation of Rs.80,000/- under the following break-up details.

| | | |
|---|---|---|
| Permanent disablement | - | Rs.50,000/- |
| Medical expenses | - | Rs. 8,000/- |
| Pain and sufferings | - | Rs. 5,000/- |
| Extra nourishment | - | Rs. 3,000/- |
| Transport expenses | - | Rs. 4,000/- |
| Future medical expenses | - | Rs.10,000/- |
| Total | - | Rs.80,000/- |

5. While fixing the liability, the Tribunal has found that the driver Kesavamoorthy had a licence till 29.03.2010 and thereafter, the driving licence was not renewed. Therefore, there is a finding that the driver did not possess a valid and effective driving licence. In such view of the matter, the Tribunal passed an order directing the first and second respondents in the claim petition to pay a sum of Rs.80,000/- either jointly or severally.

6. In the later part of the same Judgment, the Tribunal has made an observation that the driver did not have a valid driving licence at the time of accident. Therefore, the amount of compensation would be paid by the National Insurance company/second respondent and the Insurance company is at liberty to recover it from the first respondent. These findings are under challenge by the Insurance Company.

7. It is the contention of the learned counsel for the appellant National Insurance Company that when there is a violation of the policy conditions, especially, with regard to the driving licence, the Insurance Company is not liable to pay compensation and therefore, there should have been total exoneration of the Insurance company from the liability to pay compensation.

8. Whether this contention could be accepted or not?, is the issue to be considered.

9. It is not the case of the insurance company that the driver was not holding a driving licence. It is a case where the driver was not in possession of a valid and effective driving licence on the date of accident. In fine, the driver had not renewed his driving licence. In such a scenario, there is a violation of terms and conditions of insurance. However, for breach of the terms and conditions of licence, it is for the insurance company to proceed against the owner of the vehicle and recover the compensation. The Tribunal has considered the matter in its right perspective and has rendered a finding that both the owner and insurer are jointly and severally liable to pay the compensation and further directed the insurance company to pay the compensation amount and, thereafter, recover the same from the owner of the vehicle. The Tribunal has followed the ratio laid down by the Courts on this aspect and has rendered a just and correct finding, which does not warrant any interference. The Insurance Company cannot get complete exoneration, as is prayed for and is bound by the terms of the order passed by the Tribunal.

10. For the reasons aforesaid, the appeal, being devoid of merits, is liable to be dismissed and, accordingly, the same is dismissed confirming the order passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant/insurance company is directed to deposit the award amount as quantified by the Tribunal, along with interests and costs, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident claims Tribunal,
   Subordinate Judge,
   Sathyamangalam.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.(2-copies)

+ 1 cc to Ms. M.B. Surekha, Advocate Sr.10931

C.M.A.No.616 of 2017

MR(CO)
EU(03/04/2018)