IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 05.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 9 of 2014

M/s. United India Insurance Co. Ltd
Regional Office, Opp: Park Gate
Dr.Nanjappa Road,
Coimbatore-18 .. Appellant

versus

1. Minor A.Jawahar Pragadeeshwar
   Rep. by his Gaurdian Father
   Anandha Kumar
   No.267, Perumal Koil Street
   Fort, Coimbatore.

2. Karthika
3. Shanthi Mary .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.08.2013 made in M.C.O.P.No.79 of 2013 on the file of the MACT (CJM), Coimbatore.

For appellant : Mr.T.Ravichandran

For respondents: Mr.Mouli Chandrasekar (R1)
No appearance (R2 and R3)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging its liability to pay compensation. The claimants/respondents filed claim petition claiming a sum of Rs.3,00,000/- for the injuries sustained by the 1st respondent herein. The Tribunal, on considering the evidence, both oral and documentary, awarded a sum of Rs.90,000/-, the break-up details of which is as hereunder :-

a. Disability	-	Rs.30,000/-
b. Pain & Sufferings	-	Rs.25,000/-
c. Medical Bills	-	Rs.25,500/-
d. Nutrition	-	Rs. 1,000/-
e. Transport	-	Rs. 5,000/-
f. Loss of 2 teeth	-	Rs. 3,500/-
		Rs.90,000/-

The Tribunal has directed the Insurance Company to pay the award amount to the claimants and also permitted to recover the same from the 1st & 2nd respondents therein viz., the driver and the owner.

2. The main contention of the learned counsel for the Insurance Company is that the Tribunal ought to have considered the fact that the rider of the motorcycle was not holding a valid driving licence at the time of accident. Though the Tribunal has given a finding that the driver of the motorcycle did not have valid driving licence, however, the 3rd respondent Insurance Company therein was directed to pay the compensation with liberty to recover the same from the 1st & 2nd respondents therein. This order is under challenge in this appeal.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1st respondent and perused the terms and conditions of the insurance agreement and the other documents placed before the Court.

5. The terms and conditions of insurance is a binding contract between the insurer and the insured. The insurance company questions its liability to pay the amount only on the ground of the driver of the motorcycle not having a valid driving licence. There is no second opinion that it is the liability of the insurer to pay the amount to the claimant in case the vehicle in question has a valid insurance cover. In the case on hand, the motorcycle in question is fully insured with the appellant/insurance company. However, that would not preclude the insurance company to disown its liability to adhere to the terms of the policy on the ground that the driver of the insured vehicle does not possess a valid driving licence. The insurance policy provides for cover for any accident that may happen during the period during which the policy is in force. The insurance policy further provides for covering the liability to compensate the victim in case of any accident caused by the insured vehicle. Therefore, the first leg of the policy mandates that the insured vehicle meeting with any accident, the victim of the accident is to be compensated in terms of the conditions of the policy. However, equally true it is that

violation of the policy terms cannot be put against the insurer and it is the insured who is liable in such circumstances. Therefore, for any violation of the insurance terms, it is always open to the insurance company to proceed against the insured, but however, breach of the terms and conditions cannot in any way be binding on the claimant and would in no way, affect the case of the claimant to claim compensation. It is for the insurer to proceed against the insured in a manner known to law to recover the due, which is not due and payable by the insurer on account of the violation of the terms and conditions of the insurance, but which liability stands transferred to the shoulder of the insured for non-adherence to the policy conditions.

6. Therefore, there being a valid insurance cover for the vehicle in question, which covers accidental mishap, there is no embargo on the Tribunal to direct the insurance company to pay the amount to the claimant. However, for the violation of the terms and conditions of the insurance, the insurance company was given the liberty to recover the amount from the insured, for violation of the terms of insurance. Therefore, the direction passed by the Tribunal directing the insurance company to pay the compensation to the claimant and granting liberty to the insurance company to recover the same from the insured cannot be found fault with. There being nothing wrong in the order passed by the Tribunal, this appeal deserves to be dismissed.

5. Accordingly, this appeal is dismissed confirming the order dated 20.08.2013 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Coimbatore, in M.C.O.P.No.79 of 2013. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accidents Claims Tribunal
   (Chief Judicial Magistrate)
   Coimbatore.

2. The Section Officer
   VR Section,
   High Court, Madras.

+1 cc to Mr.T.Ravichandran Advocate sr 1021

+1 cc to Mr.L.Mouli Advocate sr 1548

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