

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1602 of 2010
and MP.No.1 of 2010

The Oriental Insurance Company Ltd.,
Gudiyatham. .. Appellant/2nd Respondent

Vs.

1.Sekar ..1st Respondent/Petitioner
2.Gajalakshmi ..2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 22.09.2008 passed in MCOP. No.574 of 2006 on the file of the Motor Vehicles Accident Claims Tribunal cum Additional District Court, Dharmapuri.

For Appellant : Mr.R.Sivakumar
For Respondents : Mr. K.A.Ravindran [for R2]

JUDGMENT

In a road accident that took place on 20.04.2005 at about 12.30 noon, while the claimant was riding a cycle, a car belonging to the first respondent and insured with the appellant knocked him down, owing to which he suffered injuries. Seeking a compensation of Rs.3,00,000/- he moved the Tribunal, whereas Tribunal has passed an award for Rs.28,000/- payable with interest @ 7.5%.

2. Before the Tribunal, the insurance company has taken up a plea that the rider of the car did not possess a valid and effective driving licence. However, the Tribunal proceeded to mulct liability both on the owner of the vehicle as well as the insurance company.

3. The learned counsel for the appellant submitted that admittedly the rider of the car did not possess a valid and effective driving licence and it is a case of policy violation and therefore, wanted to qualify the award passed by the Tribunal and required this Court to invoke the doctrine of 'pay and recover'. It is also seen from evidence, especially the evidence of R.W.2 that the driving licence of the driver of the car expired on 28.09.2003, and renewed only two days after the accident. This aspect of the matter was now in dispute.

4. In this case, the claimant is yet to be served with notice of this appeal. However, the dispute is essentially related to who has to pay compensation, or to be more precise, whether there is an absolute liability on the appellant to pay compensation. Hence, the presence of the claimant may not be necessary.

5. It is an admitted case that the driver of the offending vehicle did not possess a valid and effective driving licence. This is admittedly a violation of the policy condition and necessarily the doctrine of pay and recover would apply.

6. In the result, the appeal is partially allowed and the appellant is directed to pay compensation amount awarded and recover the same from the owner of the vehicle. The appellant is directed to deposit the amount, if not already deposited within six week from the date of receipt of a copy of this order, whereupon, the claimant is permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ds

To:

The Additional District Judge
Motor Accident Claims Tribunal
Dharmapuri.

+ 1 cc to Mr. R. Sivakumar, Advocate SR.56101
+ 1 cc to Mr. K.A. Ravindran, Advocate SR.56993

GJII(CO)
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C.M.A.No.1602 of 2010

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