IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2880 of 2008
& M.P.No.1 of 2008

United India Insurance Company Limited,
Divisional Office I,
104-A, Peramanur Main Road,
Salem - 7. ..Appellant/II Respondent

-vs-

1.Jayaprakash

2.M.Geethamani ..Respondents/Petitioners and I Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2008 made in M.C.O.P.No.558 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional District Judge - Fast Track Court No.II), Salem.

For Appellant	:	Mrs.R.Sreevidhya
For Respondent No.1	:	Mr.K.Kuppusamy
For Respondent No.2	:	Exparte

J U D G M E N T

The Insurance Company/Second respondent in M.C.O.P.No.558 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional District Judge - Fast Track Court No.II), Salem, is the appellant. The first respondent is the claimant has filed the petition claiming compensation of Rs.3,00,000/- for the injuries sustained by him in a motor accident on 06.01.2004. The second respondent is the owner of the offending vehicle. The Tribunal has awarded a total compensation of Rs.64,750/- with interest at the rate of 7.5% per annum.

2. The only challenge before this Court is that the Insurance Company is not liable to pay the compensation on the ground that the driver of the offending vehicle was not duly licenced, to drive the vehicle at the time of accident and

thereby, the insured violated the conditions of policy. There is no challenge to the quantum of compensation fixed by the Tribunal.

3. The learned counsel appearing for the appellant / Insurance Company would submit that the driver of the offending vehicle did not possess a valid licence at the time of accident to drive the offending vehicle, which carried 6 tons of LPG cylinders. According to the appellant, there was breach of policy condition. It is not in dispute that at the time of accident, the offending vehicle was driven by Prabhu. To substantiate their plea, they have examined R.W.1, Assistant from the Regional Transport Office, Perambalur.

4. It is the evidence of R.W.1 that, there was no endorsement on the driving licence of the driver of the offending vehicle to drive the vehicle carrying hazardous goods. He has produced a copy of the driving licence of the driver of the offending vehicle. R.W.1 has produced a copy of the driving licence of the driver of the offending vehicle. There is no endorsement authorising him to drive the offending vehicle which carried hazardous goods [gas cylinders]. The copy of the Insurance Policy has been marked as Ex.P.2. The Tribunal held that the omission of the endorsement to drive the Lorry in question did not contribute to the cause of accident and that, therefore, the insurer was responsible to pay the compensation.

5. A perusal of the materials on record would clearly show that, there was breach of policy conditions. However, the claimant is a third party. Therefore, the Insurance Company is liable to pay the award amount to the first respondent / claimant and thereafter, they can recover the award amount from the owner of the vehicle. Therefore, there is no difficulty in coming to the conclusion that the insured has violated conditions of the policy. However, the victim is a third party. Therefore, there must be a direction to the Insurance Company to pay the award amount for and on behalf of the owner of the offending vehicle, at the first instance. The insurer is entitled to seek recovery from the second respondent by way of appropriate application before the Tribunal without need for any separate proceedings in this regard.

6. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent as mentioned above. The award amount is payable by the insurer. The Insurance Company is to recover the compensation amount by filing Executive Petition from the owner of the offending vehicle. Since the appellant / Insurance Company had deposited the entire award amount of Rs.64,750/- with interest at the rate of 7.5% per annum and costs, less the statutory deposit, to the credit of

M.C.O.P.No.558 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional District Judge- Fast Track Court No.II), Salem, the first respondent / claimant is permitted to withdraw the same with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Motor Accidents Claims Tribunal
(Additional District Judge -
Fast Track Court No.II),
Salem.

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

+ 1 cc to M/s. R. Sreevidhya, Advocate Sr.12009

C.M.A.No.2880 of 2008

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