

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.662 of 2002

The Oriental Insurance Company Ltd.,
No.35, Krishna Street,
Anna Salai,
Tiruvannamalai Town,
Tiruvannamalai District.

.. Appellant

Vs

1.Palani

2.V.S.Manoharan

.. Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree (Award) of the Additional Motor Vehicles Claims Tribunal, Tiruvannamalai in M.C.O.P.No.113 of 1997 dated 28.02.2001 .

For Appellant : Mr.B.Manohar
For Respondents : No appearance

JUDGMENT

This appeal is preferred by the Insurance Company challenging the liability fastened on it. In a road accident that took place on 06.08.1996, the claimant/first respondent was hit by a motor cycle bearing Registration No.TN25-A-3320 belonging to the second respondent, owing to which he suffered fracture to his left knee and for the injuries that he had sustained, he moved the Tribunal seeking compensation of Rs.1,00,000/-, against which the Tribunal has passed an award for Rs.71,200/- payable with

interest @ 12% per annum.

2. In this counter, the Insurance Company has raised a contention that the rider of the motor cycle had only licence to drive light motor vehicles and not a motor cycle like bullet and that the Insurance Company is not liable for the same.

3. The submission of the learned counsel does not impress this Court. In fitness of things, the Tribunal should have applied doctrine of "pay and recover" rather than fastening joint liability on the Insurance Company. In **Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & Others** [2012(1) TN MAC 394 (DB)], the Hon'ble Division Bench has held that in cases such as one at hand the Insurance Company is liable to pay the compensation at the first instance and recover the same from the insured subsequently.

4. Accordingly, the appeal is partially allowed and the liability of the Insurance Company is partially modified in that it shall be liable to pay the award amount at first instance and then it shall recover the same from the owner of the vehicle. The learned counsel for the appellant submitted that the entire award amount has been deposited. The claimant is entitled to withdraw the award amount along with accrued interest now lying in the Court deposit forthwith. No costs.

03.01.2017

ds

To:

- 1.The Additional Motor Vehicles Claims Tribunal,
Tiruvannamalai.
- 2.The Section Officer
VR Section,
High Court, Madras.

N.SESHASAYEE,J

ds

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