IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.993 of 2004
and CMP.No.5779 of 2004

The New India Assurance Co. Ltd.,
R.S.Puram,
Coimbatore. ..Appellant/Respondent

Vs.

1.R.B.Rajashekar
2.Rajeev Prakash
3.N.Sukumaran ..Respondents/Petitioner
1st and 2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree passed in MCOP.No.300 of 1999 dated 11.04.2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.I), Coimbatore.

For Appellant : Mr.J.Chandran
For Respondents: M/s.R.Margabandhu
& Malarvizhi [for R1]

JUDGMENT

The Insurance Company which is arrayed as the third respondent in MCOP.No.300 of 1999 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.I), Coimbatore, has come forward with this appeal challenging its liability in a case where the claimant had fractured his left leg in a road accident that took place on 22.05.1998 at about 10.30 hours. According to the claimant at that relevant time, he was riding a motor cycle bearing registration No.TX-E-8397 and a jeep bearing registration No.KL12-4516 driven by the second respondent herein collided with the motor cycle, owing to which, the claimant suffered injuries. He moved the Tribunal with a claim of Rs.3,00,000/-, whereas the Tribunal has passed an award for Rs.1,50,000/- payable with interest @ 9% per annum.

2. Before the Tribunal, the Insurance Company inter alia has taken up a plea that the driver of the jeep (first respondent before the Tribunal) did not have a valid licence. This the Tribunal has negated.

3. Challenging the finding of the Tribunal fastening liability on the appellant/Insurance company, the learned counsel for the appellant contended that the vehicle in question is used

as a "taxi" whereas Ext.R2, the driving licence of the first respondent, though enabled him to drive light motor vehicle, still there was no endorsement in it for driving a " taxi cab" and to this extent there is a violation of policy condition.

4. R.W.1, the official of the Insurance Company in his evidence has indicated that Ext.R1, policy has been issued for the use of jeep in question as taxi/private car for public hire and as rightly contended by the learned counsel for the appellant, the driver of any such passenger vehicle which is used as a taxi for public hire shall have necessary badge or endorsement. Since Ext.R2 has no such endorsement, it is evident that there is a violation of policy condition. However, in all such situations the Insurance Company is liable to pay the compensation at the first instance and is entitled to recover the same from the owner of the vehicle.

5. Accordingly this appeal is partially allowed and the Insurance Company is directed to pay the compensation amount if not already deposited, within four weeks from the date of receipt of a copy of this order and it can realise the said sum from the owner of the vehicle in the same proceedings. Upon deposit of such amount, the claimant/first respondent is entitled to withdraw the amount deposited forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:
The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court No.I,
Coimbatore.

+ 1 cc to M/s.R. Margabandhu, Advocate Sr.4842

CMA.No.993 of 2004

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