



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1127 of 2015

and

MP (MD) No.1 of 2015

M/s United India Insurance Co. Ltd,
Jeevajothi building,
Salai Road, Dindigul District.

... Appellant

Vs.

1.Palanisamy
2.Balasubramanian

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 03.02.2014 made in M.C.O.P No.175 of 2008 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Court) Dindigul.

For Appellants	: Mr.B.Rajesh Saravanan
For Respondents	: Mr.S.Ponsenthil Kumaran
	for R1
	Mr.D.Venkatesh for R2

JUDGMENT

The insurance company has filed this Civil Miscellaneous Appeal questioning the award dated 03.02.2014 made in M.C.O.P No.175 of 2008 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Court, Dindigul) fastening of the entire liability on it.

2.The first respondent is the claimant. He met with an accident and got injured. The accident that took place on 12.09.2007 involved the vehicle belonging to the second respondent herein. F.I.R was registered against the driver of the second respondent herein on the file of Keeranoor police station in Crime No.391/2007. The first respondent herein/claimant had filed the said MCOP seeking compensation of Rs.5.00 lakhs. But, the Tribunal awarded only a sum of Rs.1,55,860/-.

3.The appellant herein was shown as the second respondent in the claim petition. The appellant insurance company specifically contended that the driver of the Load van was not having valid effective driving licence. Even though the owner of the vehicle



entered appearance and contested the proceedings, the Tribunal chose to exonerate the owner and fasten the entire liability on the insurance company.

4. The Tribunal took the view that the insurance company had not taken steps to show that the driver did not possess a valid driving licence. An official working in the RTO office was examined by the insurance company as RW.1. Through the said witness, Ex.D1 was marked. The said official witness categorically deposed that the driver of the offending vehicle did not possess a valid driving licence. However, in his letter he had stated that it is not possible to find out the driving licence particulars for any individual without the driving licence number. Taking advantage of the contents such a letter, the Tribunal chose to exonerate the vehicle owner.

5. The learned counsel for the appellant insurance company contended that the insurance company had discharged the onus cast on it. All that it could do is to examine the RTO official concerned. Beyond that it could not do anything. If the owner had remained ex-parte they could have sent notice to him calling upon him to produce the particulars of the vehicle. The owner was very much present before the Court. The insurance company had also filed its counter raising the plea of non possession of valid driving licence by the driver of the offending vehicle.

6. Therefore, the Tribunal was clearly not justified in casting the entire liability on the insurance company. The reasoning is clearly wrong. This is a case in which the principle of "Pay and Recover" has to be applied. Therefore, the award dated 03.02.2014 made in M.C.O.P No.175 of 2008 on the file of the Motor Accidents Claims Tribunal, (Additional Sub Court, Dindigul) is modified.

7. The appellant insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum and costs, from the date of petition till date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any and thereafter recover the said amount from the vehicle owner by filing execution petition in this very proceeding. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

8. The Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/



To

The Judge,
Motor Accidents Claims Tribunal,
(Additional Sub Court) Dindigul.

Copy to:

The Record Keeper, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.VENKATESH Advocate in SR. No. 84864
+1cc to Mr.S.PON SENTHIL KUMARAN Advocate in SR. No. 84912
+1cc to Mr.B.RAJESH SARAIVANAN Advocate in SR. No. 84720
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JS/GT/SAR.3/14.12.2017/3P-6C

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