



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.569 of 2015

and

MP(MD)No.2 of 2015

The Branch Manager,
The New India Assurance Company Limited,
Periyakulam Main Road,
(Near Theni Police Station),
Theni.

...Appellant/Respondent No.2

Vs.

1.Sornalatha

...1st Respondent/Petitioner

2.Amirudeen

...2nd Respondent/Respondent No.1

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree dated 29.01.2014 in MCOP.No.113 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthamapalayam.

For Appellant : Mr.K.Murugesan

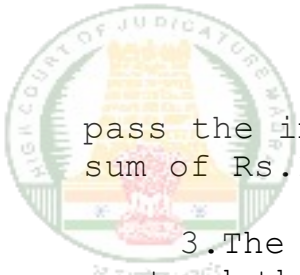
For Respondents : Mrs.A.S.Rajeswari for R2

No appearance for R1

JUDGMENT

The insurance company has filed this appeal questioning the order dated 29.01.2014 in MCOP.No.113 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthamapalayam on the ground of liability.

2.One Sornalatha was injured in an accident. She filed MCOP.No.113 of 2012 seeking compensation. The owner of the car Amirudeen was set exparte before the Tribunal. The offending vehicle was insured with the appellant herein. The appellant herein examined the official from the local RTO office. They also issued Ex.R2 notice to the vehicle owner. There is nothing on record to show that the driver of the car possessed a valid <https://hcservices.products.gov.in/hcservices/> license. Even though this aspect of the matter was strongly contested before the Tribunal, the Tribunal chose to



pass the impugned award and directed the appellant herein to pay a sum of Rs.1,25,000/- with interest.

3.The learned counsel appearing for the appellant would contend that there has been a breach of the policy condition. The driver of the car which was insured by them, did not have a valid driving licence. Therefore, the learned counsel appearing for the appellant seeks exoneration.

4.In all such cases, where there is a breach of the policy condition, only pay and recover principle can be adopted. Therefore, the appellant shall satisfy the award in the first instance. Thereafter, he is entitled to proceed against the owner for recovery of paid amount by filing execution petition in these very proceedings. Therefore, the impugned award is modified to this extent.

5.The appellant insurance company is directed to deposit the entire award amount as awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the 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 same from the vehicle owner by filing execution petition before the Tribunal. On such deposit, the claimant is entitled to withdraw the same with interest, less the amount already withdrawn by him, if any, by filling proper application before the Tribunal.

6.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, SUB COURT, UTHAMAPALAYAM.

COPY TO: 1 THE RECORD KEEPER, V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
2 SORNALATHA, W/O.MURUGESAN,
NO.36/12,VEERANA THEVAR POSSARI ST,
ANAIPATTI, UTHAMAPALAYAM TALUK, THENI DISTRICT.

+1CC to Mr.A.S.Rajeswari, Advocate, SR.No. 88027

+1CC to Mr.K.Murugesan, Advocate, SR.No. 88096

C.M.A. (MD) No.569 of 2015 AND

MP (MD) No.2 of 2015

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