



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.564 of 2011

and

M.P. (MD) No.1 of 2011

The Divisional Manager,
The United India Insurance Co. Ltd.,
No.1, Post Office Road,
Palayamkottai.

...Appellant/3rd Respondent

Vs.

1.Anto Jessy
2.Deva Asir Raja
3.Mohammed Ibrahim
4.Johnson Kovilpillai
5.The Divisional Manager,
The Oriental Insurance Company Ltd.,
No.6 A, North Corron Road,
Thoothukudi.

...1st Respondent/Petitioner
...2nd Respondent/1st Respondent
...3rd Respondent/2nd Respondent
...4th Respondent/4th Respondent
...5th Respondents/ 5th Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and decree dated 02.11.2010 passed in M.C.O.P.No.455 of 2008 on the file of the Motor Accidents Claim Tribunal, Principal Sub Court, Tirunelveli.

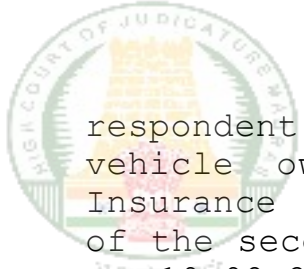
For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : MrT.Selvakumaran for R1
No Appearance for R2
Mr.Na.Palaniyandi for R3
Mr.S.Sivasubramanian for R4
Mr.G.Jawahar Ravindran for R5

JUDGMENT

This civil miscellaneous appeal has been filed by the United India Insurance Company Limited against the award dated 02.11.2010 made in M.C.O.P.No.455 of 2008 on the file of the Motor Accidents Claim Tribunal, Principal Sub Court, Tirunelveli.

2.The first respondent herein is the claimant. He had travelled as a passenger in the vehicle belonging to the second



respondent herein. The second respondent was the driver cum vehicle owner. The vehicle was insured with the appellant Insurance company. On account of the rash and negligent driving of the second respondent herein, the accident in question occurred on 10.08.2008. The Indica car bearing registration No.TN 04 H 7104 belonging to the second respondent herein was involved in an accident with the vehicle belonging to the fourth respondent herein. The claimant lost vision in one of his eyes. The Tribunal awarded a sum of Rs.7,06,900/- with interest at 7.5% per annum against the appellant insurance company. Aggrieved by the same, this civil miscellaneous appeal has been filed.

3.The learned counsel appearing for the appellant insurance company pointed out that a counter statement was filed before the Tribunal pointing out that the vehicle owner, who drove the offending vehicle was having only Learner's Licence. In support of this plea, Ex.R1 was marked through D.W.1, the Record Clerk working in Tirunelveli Regional Transport Office. Thus, it has been established beyond any doubt that the offending vehicle was driven by the person, who was not having a valid and effective driving licence. Therefore, the insurer cannot be called upon to indemnify the owner. However, as far as the payment of compensation to third party is concerned, the insurance company cannot escape from its liability. This Court therefore is inclined to modify the award passed by the Tribunal.

4.When the appeal was taken up for admission, a condition to deposit the entire award amount together with interest was imposed. The learned counsel for the appellant states that this condition was complied with. The claimant was permitted to withdraw 50% of the deposited amount with proportionate interest during the pendency of the appeal. The claimant is permitted to withdraw the remaining amount also. The appellant insurance company is permitted to recover the entire award amount from the owner by initiating execution proceedings directly against the owner.

5.This civil miscellaneous appeal is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

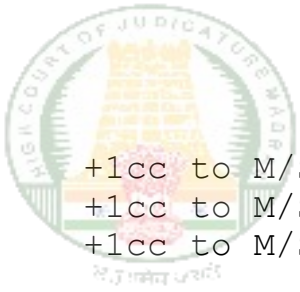
Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal Sub Ordinate Judge,
Tirunelveli.



+1cc to M/S.G.PRABHU RAJA DURAI, Advocate SR.No.81677
+1cc to M/S.T.SELVA KUMARAN, Advocate SR.No.81683
+1cc to M/S.C.JAWAHAR RAVINDRAN, Advocate SR.No.81744

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MAS/MR-KKR/SAR4:03.11.2017:3P-5C

ORDER MADE IN
C.M.A. (MD) No.564 of 2011
and
M.P. (MD) No.1 of 2011
04.10.2017