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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1591 of 2008

C.Chandrasekaran

... Appellant/Petitioner

Vs

1.V.Loganathan

2.The Oriental Insurance Co. Ltd.,

Rep. by its Divisional Manager

1st Floor, No.1 Katpadi Road, Vellore - 4

....Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 31.08.2007 made in MCOP No.27/2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents: No appearance for R1

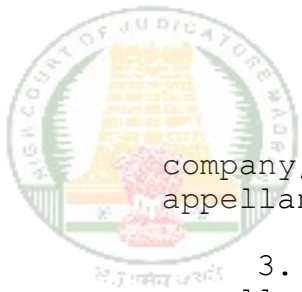
Mr.D.Baskaran for R2

J U D G M E N T

This instant appeal has been filed by the claimant challenging the finding of the Motor Accident Claims Tribunal, Chennai in its award dated 31.08.2007 passed in MCOP No.27 of 2006 exonerating the second respondent / Insurance Company from any liability to pay the compensation amount.

2. The brief facts leadings to the filing of the instant appeal are as follows -

2 (a) The appellant/claimant sustained injuries on 14.04.2006 as a result of an accident caused by a vehicle bearing Regn.No.TN23-AA-8177 owned by the first respondent and insured with the second respondent/insurance company. The appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, Chennai in MCOP No.27 of 2006 seeking a compensation of Rs.5,55,000/-. The Motor Accident Claims Tribunal, Chennai by its award dated 31.08.2007 in MCOP No.27 of 2006 directed the first respondent to pay the appellant/claimant a sum of Rs.50,000/- together with interest @ 7.5% per annum from the date of claim till the date of realisation and exonerated the liability of the second respondent. Aggrieved with the findings of the Tribunal exonerating the liability of the second respondent/insurance



company, the instant appeal has been filed by the appellant/claimant.

3. Heard Mr.C.Prabakaran, learned counsel appearing for the appellant and Mr.D.Baskaran, learned counsel appearing for the second respondent/ insurance company.

4. According to the learned counsel for the appellant, the Tribunal has erroneously exonerated the liability of the second respondent/insurance company on the ground that the driver of the vehicle insured with the second respondent did not possess a valid driving license. Therefore, according to him, as per settled law, in case of policy violation, the insurance company will have to settle the claim amount to the claimant and recover the same from the insurer who is the owner of the vehicle.

5. This Court is in agreement with the contention of the learned counsel for the appellant. The Hon'ble Supreme Court in the case of S.Iyyappan v. United India Insurance Company Limited and another reported in 2013 (7) SCC 62 has held that in case of insurance policy violation by the insured, the insurer will have to pay the compensation amount to the claimant and recover the same from the insured. The Tribunal has therefore erroneously, under the impugned award has exonerated the liability of the second respondent/insurance company to pay the claimant who is the appellant herein.

6. In the result, this Civil Miscellaneous Appeal is partly allowed modifying the impugned award in so far as the findings given by the Tribunal exonerating the liability of the second respondent/insurance company by holding that the second respondent / insurance company is liable to pay the compensation amount to the appellant herein and permitting them to recover the said amount from the first respondent in the same proceedings. No costs.

7. The second respondent/insurance company is directed to deposit the award amount together with accrued interest to the credit of MCOP No.27 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the said amount, by filing appropriate application.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rgr



To

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The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.

+1 CC to Mr.C. Prabakaran, Advocate sr 65878.
+1 CC to Mr.D. Baskaran, Advocate sr 65764.

C.M.A.No.1591 of 2008

GJ(CO)
SP(16/10/2018)