

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2969 of 2011

The Divisional Manager,
United India Insurance Company Ltd.,
No.45, TKM Complex,
Katpadi Road, Vellore-4. ... Appellant/2nd Respondent

vs

1.Minor.Mukesh Raj,
represented by next friend guardian
father Thangaraj, S/o.Subramani ...1st Respondent/Petitioner

2.B.Syed Sadique Basha ... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 29-4-2011 made in M.C.O.P.No.262 of 2009 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Vellore.

For Appellant : Mr.D.Bhaskaran

For respondents: R1 Minor rep. by R2
R2 - served - No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 29.04.2011, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Vellore in MCOP.No.262 of 2009.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent sustained injuries on 18.06.2008 as a result of an accident caused by a Motor cycle bearing Registration No.TN-23 AP-2776 owned by the second respondent and insured with the Appellant.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.262 of 2009, seeking a compensation of Rs.5,00,000/- for the injuries sustained by him as a result of the accident.

(ii)The Motor Accident Claims Tribunal by its Award dated 29.04.2011 in MCOP.No.262 of 2009, directed the Appellant to pay the first respondent a sum of Rs.1,25,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and permitted the Appellant to recover the same from the second respondent, who is the insured (owner) for committing policy violation.

3.Heard, D.Bhaskaran, learned Counsel for the Appellant. Both the respondents have been served and their names have been printed in the cause list today. No counsel has entered appearance on their behalf and there is no representation on the side of the Appellant.

4.According to the learned Counsel for the Appellant, the driver of the insured vehicle did not possess a valid driving license at the time of the accident and it was a wilful policy violation committed by the insured (owner). Since it is a wilful policy violation, the Appellant is not liable to compensate the claim.

5.This Court has examined the impugned Award. Under the impugned Award, the Tribunal has granted Pay and Recovery rights to the Appellant. The issue raised by the Appellant in this appeal is now well settled by the decisions of the Hon'ble Supreme Court, which has held that even in case of willful policy violation committed by the insured, the insurer is liable to pay the compensate and recover the same from the insurer (owner). In the case on hand, the Tribunal under the impugned Award has rightly held that the Appellant is liable to compensate the claim and granted Pay and Recovery rights to the Appellant. Therefore, this Court does not find any infirmity in the Award passed by the Tribunal.

6.In the result, there is no merit in the instant appeal. Accordingly, the civil miscellaneous appeal is dismissed. No costs. It is represented by the learned Counsel for the Appellant before this Court that the entire Award amount has

already been deposited by the Appellant. The Appellant is permitted to recover the same from the second respondent, who is the insured(owner).

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate Court), Vellore.

2.The Section Officer, VR Section,
Madras High Court.

+lcc to Mr.D.Bhaskaran, Advocate Sr.75719

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rsi[co]
srg 12/12/2018



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