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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3408 of 2011
and MP No.1 of 2011

The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Officers Line, CSI Building,
Vellore - 1.

...Appellant/2nd REspondent

Vs

1. G.Babu
2. D.Prakash

.. Respondent/Petitioner
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against decree and judgment dated 8th day of July 2011 made in M.C.O.P.No.214 of 2010, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore.

For Appellant : Mr.S.Manohar for
ElVeera Ravindran

For Respondents : Mr.M.Sivakumar (for R1)
Mr.M.Sathish Kumar (for R2)

JUDGMENT

The instant appeal has been filed by the Insurance company, challenging the Award dated 08.07.2011, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore in M.C.O.P.No.214 of 2010.

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

(i)The first respondent sustained injuries as a result of an accident caused by a lorry bearing Registration No.TN-28-F-4053 owned by the second respondent and insured with the Appellant.



(ii) The first respondent preferred a claim before the Motor Accident Claims Tribunal, Vellore in M.C.O.P.No.214 of 2010, seeking compensation of Rs.5,00,000/-.

(iii) The Motor Accident Claims Tribunal, Vellore by its Award dated 08.07.2011, in M.C.O.P.No.214 of 2010, directed the Appellant to pay the first respondent a sum of Rs.75,000/- together with interest at the rate of 7.5% from the date of claim till date of realization.

3. Aggrieved by the Award dated 08.07.2011, passed in M.C.O.P.No.214 of 2010, the instant appeal has been filed by the Insurance company.

4. Heard Mr.S.Manohar, learned Counsel for the Appellant. Mr.M.Sivakumar, learned Counsel for the first respondent and Mr.M.Sathish Kumar learned Counsel for the second respondent.

5. According to the learned Counsel for the Appellant, the only ground raised in this appeal is that the driver of the insured vehicle did not have a valid driving license and did not possess a badge for driving a commercial bike at the time of the accident.

6. The learned Counsel for the first respondent would submit that the issue is now well settled by decisions of this Court as well as the decision of the Hon'ble Supreme court. He referred to the judgment of the Hon'ble Supreme Court in the case of S.Iyyapan vs. United India Insurance Company Limited and another reported in (2013) 7 SCC 62 and submitted that in case of policy violation, the insurer will have to settle the claimant and recover the same from the insured. He would further submit that under the impugned Award, the interest of the Appellant has been fully protected by granting pay and recovery rights to the Appellant.

7. This Court is also in agreement with the submissions made by the learned Counsel for the first respondent.

8. In the result, there is no merit in the instant appeal in view of the settled law. Accordingly, the appeal is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.



9. It is also represented by the learned counsel appearing on both sides that the Appellant has already deposited 50% of the compensation awarded by the Tribunal. The Appellant Insurance Company is directed to deposit the balance award amount along with interest within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent is permitted to withdraw the amount lying to the credit of M.C.O.P.No.214 of 2010 along with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

mtl/msr

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Vellore.
2. The Section Officer,
Vernacular Section,
Madras High Court. (2 Copies)

+1cc to Mr.ElVeera Ravindran, Advocate, S.R.No.72129
+1cc to Mr.M.Sivakumar , Advocate, S.R.No.72097
+1cc to Mr.M.Sathish Kumar, Advocate, S.R.No.72067

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BR (Co)
CS/13/12/2018