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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3851 of 2011 &
M.P.No.1 of 2011

The National Insurance Co. Ltd.,
Divisional Office,
No.101/N.1, D.M.C.House,
Connaught place,
New Delhi - 110 001.

.. Appellant

..Vs..

1.M.Gopal
2.S.Sankar
3.R.Ramasundaram

..Respondents

(Respondents 2 and 3 are set ex parte
in lower court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21.06.2011 made in MCOP.No.654 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.3) at Dharapuram.

For Appellant : Mrs.R.Sreevidhya

For Respondent 1 : Mr.Ma.P.Thangavel
R2 & R3 set ex parte

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the Award dated 21.06.2011 passed by the Motor Accident Claims Tribunal (Fast Track Court No.3 at Dharapuram) in MCOP.No.654 of 2009.

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

2. The first respondent sustained injuries as a result of an accident that took place on 05.04.2009 caused by a van bearing registration No.TN38-AH-7191 owned by the third respondent and insured with the Appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.654 of 2009 seeking a compensation of Rs.5,00,000/-. The Motor



Accident Claims Tribunal by its Award dated 21.06.2011 directed the Appellant to pay the first respondent a sum of Rs.61,397/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

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3. Aggrieved by the Award dated 21.06.2011 passed in MCOP.No.654 of 2009, the instant appeal has been filed by the insurance company.

4. Heard, Mrs.R.Sreevidhya learned counsel for the Appellant and Mr.Ma.P.Thangavel learned counsel for the first respondent. Respondents 2 and 3 have remained ex parte both before the Tribunal as well as this Court.

5. According to the learned counsel for the Appellant, the driver of the van which caused the accident did not possess a valid driving licence and also did not possess a badge for driving a tourist taxi, at the time of the accident.

6. Per contra, learned counsel for the first respondent would submit that the grounds raised by the Appellant in this appeal is well settled by various decisions of this Court as well as the Hon'ble Supreme Court and it has been held in their Judgments that in case of any policy violation, the insurer will have to first compensate the claim of the claimant and thereafter, recover the same from the insured.

7. This Court has examined the impugned Award.

8. Before the Tribunal, neither the valid driving licence nor the badge of the second respondent / driver of the vehicle was marked as exhibit. In view of the settled law as laid down by 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, the Appellant will have to pay the compensation amount awarded by the Tribunal to the first respondent and thereafter, recover the same from the respondents 2 and 3 who is the driver and owner of the vehicle respectively.

9. The driver and the owner of the vehicle namely second and third respondents respectively also remained ex parte before the Tribunal as well as this Court. It has been the consistent stand of the Appellant before the Tribunal that the second respondent did not possess a valid driving licence as well as badge for driving the tourist taxi. Therefore it is clearly established by the Appellant that the second and third respondent has committed policy violation. In such circumstances, the Tribunal ought to have granted pay and recovery rights to the Appellant under the impugned Award.



10. In the light of the above observations, the Appeal is allowed in part and the Appellant is directed to pay the compensation amount assessed by the Tribunal under the impugned Award to the first respondent and recover the same from the second and third respondents jointly and severally in accordance with law. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The learned counsel for the Appellant submitted that the entire Award amount together with interest has already been deposited by the Appellant. Therefore, the Appellant is permitted to recover the same from the second and third respondents jointly and severally in accordance with law and the first respondent is permitted to withdraw the amount deposited by the Appellant by filing an appropriate application.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Fast Track Court No.3, Dharapuram.

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

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 70473.

+1 CC to M/s.R. Sreevidya, Advocate sr 70685.

C.M.A.No.3851 of 2011

RGN(CO)
SP(04/02/2019)