IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.3572 of 2012

M/s. ICICI Lombard General Insurance Co. Ltd
Jenith House
Sesavarao Kadhi Mark
Mumbai
Maharashtra - 400 034 Appellant/2nd respondent

Vs

1. Gowrrammal 1st Respondent / Petitioner

2. Kathiravan 2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.11.2011 made in MCOP No.828 of 2010 on the file of Motor Accidents Claims Tribunal / Principal District Judge, Dharmapuri.

For Appellant : Ms.R. Sreevidhya

For Respondents : R1 - Mr. Selvam

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claim Tribunal/Principal District Judge, Dharmapuri in MCOP No.3572 of 2012 , the appellant herein who is the 2nd respondent in the Claim petition filed this appeal, in which he is seeking the relief to set aside the order passed by the claims Tribunal. In the claims Tribunal, the 1st respondent had filed a claim petition under Section 166 of Motor Vehicles Act, in which he claimed a compensation of Rs.4,00,000/- for the death of her mother. The 2nd respondent in this appeal is the owner of the offending vehicle. After the elaborate enquiry, the claim Tribunal awarded a compensation of Rs.1,35,000/- with interest at the rate of 7.5% per annum, and directed the appellant to pay the said compensation.

2) For the sake of convenience, herein after, the parties are referred as per their litigative status in the claims Tribunal. In the claims Tribunal, the owner of the offending vehicle, who is the 1st respondent remained exparte.

3) Today, when the appeal is taken up for consideration, both the counsels are present. The learned counsel appearing for the 2nd respondent would contend that the claims Tribunal without considering the evidence adduced by the respondents and without considering the documents marked on the side of the respondents came to the conclusion and directed the 2nd respondent to pay the entire compensation. He further contended that in the claims Tribunal, the evidence let in by the respondents clearly established that the owner of the offending vehicle violated the policy conditions, thereby directing the 2nd respondent to pay the entire award amount is erroneous in law.

4) Per contra, the learned counsel appearing for the claimant would make a submission, to consider the prayer sought for by the 2nd respondent.

5) Now, taking into consideration of the either side submissions, it is to be noted that in the Claim Tribunal, one Anbuponnambalam, who was working as Junior Assistant in Dharmapuri Regional Office was examined as RW 1. He has stated that the driver of the offending vehicle is provided with the license for driving the heavy vehicles. Further, he has stated that on 05.07.2010, he renewed the license for the year of 2009. He specifically stated in his chief examination that, since the driver renewed the driving license in the year 2010 he paid Rs.50/- as late fee. Further, the copy of the license issued in favour of the driver of the offending vehicle was marked as Ex.P.1 to Ex.P.3. According to him, on the the date of accident, the driver of the offending vehicle is not having any valid and effective Driving license. The said evidence has not been disputed on the side of the claimant.

6) Further, on the side of the claimant, it was not established that the driver of the offending vehicle is not having any valid Driving License on the date of accident. In the Claims Tribunal, in order to substantiate the evidence given by RW 1, the legal Manager, working in the 2nd respondent Insurance Company was examined as RW 2. He has also supported the evidence given by RW 1. It is apparent that since the owner of the offending vehicle violated the policy conditions, the Insurance Company is not liable to pay the compensation awarded in favour

of the claimant. However, in this connection, it is necessary to see the Judgment of our Honourable Apex Court, reported in 2013 (2) TNMAC 535. It is the settled position that if the owner of the vehicle violated the policy conditions, it is necessary to direct the insurer to pay the compensation with liberty to recover the said compensation from the owner of the offending vehicle without filing any formal application. This Court has also followed the said principle and accordingly this Court directs the insurer to pay the compensation to the claimant. Further, liberty is granted to him to recover the said amount from the owner of the vehicle without filing any formal application. The other conditions found in the award in respect to interest is unaltered.

7) In the result, the Civil Miscellaneous appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vrn

To
The Motor Accidents Claims Tribunal/Principal District Judge,
Dharmapuri.

Copy to
The Section Officer
VR Section, High Court, Madras

+1cc to Mr.R.Sreevidhya, Advocate SR.No.76543

+1cc to Mr.M.Selvam, Advocate SR.No.75428

Civil Miscellaneous Appeal No.3572 of 2012

RJI(CO)
GMY(06/02/2019)