IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1621 of 2017
and
C.M.P.Nos.8582 & 22193 of 2017

United India Insurance Company Limited,
104-A, Peramanur Main Road,
Peramanur, Salem. .Appellant/2nd Respondent

Versus

1.C.Kumar .. 1st Respondent/Claimant
2.M.Mohammed Farook ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2016 in M.C.O.P.No.1620 of 2012 on the file of Motor Accident Claims Tribunal (Special Sub-Judge No.2) at Salem.

For Appellant : Mr.R.Sree Vidhya
For Respondents : Mr.C.Richard Suresh Kumar for R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the 2nd respondent/Insurance Company which provided the insurance cover to the 1st respondent/owner of the vehicle bearing Registration No.TN-07-AV-1984, aggrieved by the compensation awarded to the claimant in M.C.O.P.No.1620 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.II, Salem, by award dated 14.07.2016.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner/claimant is that on 18.10.2012 at about 10.30a.m. while the petitioner was proceeding on the left side of Attur, Kallakurichi Main Road near Modern Weigh Bridge at Pudupet, the lorry bearing Registration No.TN-77-A-8844 came in high speed and dashed

against the two wheeler in which the petitioner was proceeding. The petitioner suffered grievous injuries and due to that permanent disability occured. At the time of accident, the petitioner who was aged 39 years was doing Milk Vending business and agriculture work. He earned a sum of Rs.9,000/- per month. Due to the injuries suffered, the petitioner is not able to carry on his normal avocation. Hence, the petitioner seeks compensation of Rs.10,00,000/- from the respondents who are the owners and insurer of the offending vehicle, which caused the accident as stated above.

4. On the other hand, opposing the petition by filing counter, the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the petitioner himself as he crossed the road without observing traffic rules. Further, the petitioner was not having valid driving license at the time of the accident. Since it amounts to violation of the policy condition, the 2nd respondent/Insurance Company is not liable to pay any compensation. Further, the claim of the petitioner regarding his work and income is denied. Since the petitioner himself is responsible for the accident, the 2nd respondent sought for the dismissal of the petition.

5. To substantiate their claim, the petitioner examined himself as P.W.1 and the medical expert as P.W.2 and produced documents viz., Exs.P1 to P10 before the Tribunal. The 2nd respondent examined R.W.1 and R.W.2 and also produced Exs.R1 to R3.

6. The Tribunal after considering the oral and documentary evidence placed before it, found that the 1st respondent, vehicle driver was responsible for causing the accident and awarded a sum of Rs.3,93,649/- and interest at the rate of 7.5% as compensation to the petitioner. Aggrieved over the said finding, the 2nd respondent/Insurance Company has preferred the appeal.

7. The learned counsel for the 2nd respondent/Insurance Company contended that without appreciating the evidence in proper manner, the Tribunal has directed the respondents to pay compensation and the same is unsustainable. The learned counsel for the 2nd respondent/Insurance Company contended that the insured vehicle driver was not having valid driving license at the time of the accident and the same is established by Exs.R2 and R3, copy of driving license and copy of the Insurance policy. Further, the evidence of R.W.1 also clearly established the said fact of lack of valid license for the driver of the offending vehicle. The Tribunal failed to appreciate the contention of the respondents about lack of valid license and

violation of policy condition and as such, the Award passed by the tribunal is sought to be set aside.

8. Per contra, the learned counsel for the petitioner contended that the Tribunal has clearly considered the materials available on record and arrived at a just and proper conclusion. Hence, the petitioner seeks dismissal of the appeal.

9. When the appeal was taken up for disposal today, the learned counsel for the 2nd respondent/Insurance Company contended that the only ground on which they are agitating is failure, on the part of the Tribunal, to hold that as there was policy violation, the 2nd respondent/Insurance Company is not liable to pay compensation and as the insurer, they should have been directed to pay and recover from the owner of the vehicle, but the Tribunal has failed to do so, and that is the only issue pressed by the 2nd respondent/Insurance Company before this Court today. In such circumstances, the finding of the trial Court regarding the permanent disability suffered by the petitioner and about suffering loss of income and other expenses incurred by him has to be confirmed. Thus, a sum of Rs.3,93,649/- awarded by the Tribunal is not challenged and as such, the same is confirmed by this Court.

10. The Tribunal in its judgment found that as per the evidence produced by the 2nd respondent/Insurance Company, the driver of the 1st respondent vehicle was having light vehicle driving license and there was no batch endorsement enabling him to drive transport vehicle. It is evidenced from Ex.R3, Insurance policy that the vehicle bearing Registration No.TN-77-A-884 was insured under it and was owned by the 1st respondent, and it was a light goods transport vehicle. Apparently, as the driver of the 1st respondent vehicle was only having license to drive light vehicle as evidenced by Ex.R2, and as per oral evidence of RW1, RTO, Attur, in the absence of any batch endorsement in Ex.R2 license, the 1st respondent driver is not entitled to drive light goods transport vehicle. It is a clear violation of Ex.R3, Insurance Policy condition. In such circumstances, the claim of the 2nd respondent/Insurance Company that they are not liable to pay any compensation amount on their own is to be accepted. However, as per Ex.R3-Insurance policy, insurance coverage was in force on the date of accident and the driver of the 1st respondent vehicle by driving the vehicle without possessing proper valid driving license has only committed the violation of the policy condition. As such, the learned counsel for the Appellant/Insurance Company contended that the Insurance Company has to be directed to pay the Award amount and liberty may be granted to recover the same from the owner of the vehicle, the 1st respondent/owner of the vehicle, who has violated the policy condition.

11. In the light of the above discussion, as held by the Tribunal, the owner and insurer of the vehicle together are bound to pay the award amount of Rs.3,93,649/-. However, in view of the conclusion arrived at by this court, in respect of clear violation of Insurance Policy Conditions, the 2nd respondent/Insurance Company is directed to pay the entire Award amount with liberty to recover the same from the 1st respondent/owner of the vehicle, involved in the accident. Hence, the point is answered accordingly.

12. In the result, the award amount of Rs.3,93,649/- passed by the Tribunal, is confirmed. Since the entire award amount has been deposited by the Insurance company, as directed by this court order dated 13.06.2017, liberty is given to the appellant-Insurance Company to recover the same from the second respondent/owner of the vehicle, in accordance with law. No costs. Consequently, connected M.P's are closed. The 1st respondent/claimant is permitted to withdraw the amount awarded as above, with accrued interest, less the amount if any already withdrawn, by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

To
1. The Special Sub-Judge No.2
Motor accident claims tribunal,
Salem.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.C.RICHARD SURESHKUMAR, Advocate, S.R.No. 7302

C.M.A.No.1621 of 2017

SV(CO)
TR(16/03/2018)