

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.931 of 2013

Venkatraj

..Appellant/Petitioner

..Vs..

1.Shahina Begum

2.The Branch Manager,
The Oriental Insurance Company Limited,
No.142, 2nd floor, 1st Cross,
Opp.Siddapura,
9th Cross, Wilson Garden,
Hosur Road, Bangalore 560 027.

C/o. The Branch Manager,
The Oriental Insurance Company Limited,
No.25-C, Arunagiri Complex, 3rd Floor,
Bye Pass Road, Hosur.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.206 of 2008, dated 12-07-2010 on the file of MACT/Sub-Court, Hosur, Krishnagiri District.

For Appellant : Mr.PA.Sudesh Kumar

For Respondent-2: Mr.D.Bhaskaran

For Respondent-1: Not ready in notice

J U D G M E N T

The instant appeal has been filed by the Claimant challenging the findings given by the Tribunal under the impugned Award dated 12.07.2010 passed by the Motor Accident Claims Tribunal (Subordinate Court) Hosur, Krishnagiri District in M.C.O.P.No.206 of 2008 exonerating the liability of the second respondent-Insurance Company.

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

(i) The appellant sustained injuries on 05.11.2007 as a result of an accident caused by a mini lorry bearing registration No.KA-16-2700 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.206 of 2008 seeking a compensation of Rs.5,00,000/- (Rupees Five Lakhs Only).

(ii) The Motor Accident Claims Tribunal, by its award dated 12.07.2010 in M.C.O.P.No.206 of 2008, directed the first respondent to pay the appellant, a sum of Rs.62,500/- (Rupees Sixty Two Thousand and Five Hundred Only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and exonerated the second respondent-Insurance Company from making any payment.

(iii) Aggrieved by the findings of the Tribunal exonerating the liability of the second respondent-Insurance Company, the instant appeal has been filed by the Claimant.

3. Heard Mr.PA.Sudesh Kumar, learned counsel for the appellant and Mr.D.Bhaskaran learned counsel for the second respondent-Insurance Company.

4. The first respondent, who is the owner of the insured vehicle, has remained ex-parte both before the Tribunal as well as this Court.

5. According to the learned counsel for the appellant, it is now well settled by the various decisions of this Court as well as the Hon'ble Supreme Court that in the case of policy violation committed by the insured, the insurer is liable to pay compensation to the claimant and recover the said amount from the owner of the vehicle (insured). According to him, in the instant case, the Tribunal has exonerated the liability of the second respondent-Insurance Company only on the ground that the driver of the insured vehicle did not possess a valid driving licence. In view of the settled law, the learned counsel for the appellant submits that the findings given by the Tribunal exonerating the second respondent-Insurance company from any liability, is an erroneous finding.

6. Per contra, the learned Counsel for the second respondent-Insurance Company has not raised any serious objection to the submission made by the learned Counsel for the appellant.

7. This Court has examined the impugned award.

8. On examining the same, it is clear that the Tribunal has exonerated the liability of the second respondent-Insurance Company only on the ground that the driver of the insured vehicle did not possess a valid driving licence at the time of the accident. This Court is in agreement with the submission

made by the learned counsel for the appellant. In view of the settled law as laid down by the Hon'ble Supreme Court reported in the case of Oriental Insurance Co.Ltd -vs-V.Nanjappan and Others reported in 2004 (1) TNMAC 211 (SC), wherein, the Honourable Supreme Court has held that when there is a policy violation committed by the insured, the insurer is liable to pay compensation to the claimant and recover the same from the owner of the vehicle (insured) in the same proceeding.

9. Accordingly, the second respondent-Insurance Company is directed to deposit the compensation amount assessed by the Tribunal under the impugned award to the appellant within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the second respondent-Insurance Company is permitted to recover the said amount from the first respondent in the same proceedings in accordance with law. The appellant is also permitted to withdraw the amount deposited by the second respondent-Insurance Company before the Tribunal by filing an appropriate application.

10. With the above observations and direction, the appeal is disposed of. No costs.

srn

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge (MACT)
Hosur, Krishnagiri District.

2. The Section Officer, सत्यमेव जयते
VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.PA.Sudesh Kumar, Advocate, SR.No.70957

+1cc to Mr.D.Bhaskaran, Advocate, SR.No. 71209

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Kak(06/08/2019)