



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.514 of 2011

and

M.P.NO. 1 of 2011

M/s. United India Insurance Co. Ltd.,
No.146-N, Kumar Complex,
Tiruchengodu - 637 211,
Namakkal District.

... Appellant

Vs

1. Mohan

2. Barakath Ali.

(2nd Respondent ex-parte in Lower Court)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.316 of 2007, dated 22.04.2010, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Ms. T.Gayathri for
Mr.C.Kulanthaivel [For - R1]
[R2- Exparte]

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 22.04.2010 passed by the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri in M.C.O.P.No.316 of 2007.

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 Hero Honda Splendour vehicle bearing Registration No. TN-34 B- 9463 owned by the second respondent and insured with the appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.316 of 2007 seeking a compensation of Rs.10,00,000/-.



(ii) The Motor accident Claims Tribunal, by its award dated 22.04.2010 in M.C.O.P.No.316 of 2007 directed the appellant to pay the first respondent a sum of Rs.1,40,000/- together with interest at 7.5% per annum from the date of claim till the date of realization.

(iii) Aggrieved by the Award dated 22.04.2010 passed in M.C.O.P.No.316 of 2007, the instant appeal has been filed by the Insurance Company.

3.Heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Ms.T.Gayathri for Mr.C.Kulanthaivel learned counsel for the first respondent. The second respondent has remained ex-parte before the Tribunal and has also been set ex-parte by this court.

4.According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that despite the driver of the vehicle did not possess a valid driving license, the Tribunal has not applied the doctrine of pay and recovery. According to her, there is a clear finding given by the tribunal that the driving license which is marked as Ex.P1 is only for the period from 17.03.2008. The accident happened on 10.04.2007. Therefore, according to her as on the date of accident, the driver of the vehicle did not possess a valid driving licence. According to her, the burden of proving that the driver of the vehicle was having a valid driving license is on the owner of the vehicle who is the insured. It is further contended that the owner of the vehicle (insured) remained ex-parte before the tribunal as well as before this court.

5.This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective counsels observes the following:-

a) Admittedly, the driving license produced by the first respondent before the tribunal which is marked Ex.P1 is valid for the period only from 17.03.2008, whereas the accident took place on 10.04.2007. Further the RTO who was examined by the appellant as RW.1 has also deposed that the driver of the vehicle possessed a valid driving license only from 17.03.2008. The owner of the vehicle (insured) did not enter appearance before the tribunal and let in oral and documentary evidence to prove that driver of the vehicle was having a valid driving license at the time of the accident.

6.Considering all these factors, this court is of the considered view that the Tribunal ought to have applied the doctrine of pay and recovery in favour of the appellant but in the instant case, the Tribunal has erroneously not granted such



relief to the appellant by giving a finding that the burden of proving that the driver of the vehicle did not possess a valid driving license at the time of accident is on the appellant, despite the fact that the owner remained ex parte before the Tribunal. In the considered view of this Court, the said finding is erroneous. Insofar as quantum of compensation awarded by the Tribunal, the appellant has not raised any serious objection to the same.

7. In the result, this Civil Miscellaneous Appeal is partly allowed by modifying the impugned award dated 22.04.2010 passed in M.C.O.P.No.316 of 2007 by directing the appellant to pay the award amount to the first respondent and recover the same from the second respondent and insofar as the quantum of compensation awarded, the impugned award is undisturbed. No costs. Consequently, the connected miscellaneous petition is closed.

at/ebsi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Subordinate Court,
Sankagiri.

2. The Record Clerk,
VR Section,
High Court, Madras. (2 copies)

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.63162

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.63201

C.M.A.No.514 of 2011

pp(co)
kak (04/01/2019)