IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2612 of 2010
and
M.P.No.1 of 2010

The National Insurance Co. Ltd.,
Divisional Office-I,
L.R.N.Complex,
Saradha College Road,
Salem-7.

... Appellant/2nd Respondent

..Vs..

1.Arumugam

2.Anbalagan ...Respondents/Petitioner 1st Respondent
(R2 Set exparte before Lour Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.01.2010 made in MCOP. No.451 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Salem.

For Appellant : Mrs.R.Srividya

For Respondent 1 : Mr. K.Kuppusamy

R2 - Ex parte

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 28.01.2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Salem in its Judgment and Decree passed in M.C.O.P No.451 of 2007.

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

2. The first respondent sustained injuries caused by a vehicle insured with the appellant. The first respondent preferred a compensation claim before the Motor Accident Claims

Tribunal, Chief Judicial Magistrate, Salem, in MCOP. No.451 of 2007. The Tribunal by its Judgment and Decree dated 28.01.2010 passed in MCOP No.451 of 2007 directed the Appellant to pay the first respondent a sum of Rs.1,70,643/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 28.01.2010 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem in MCOP. No.311 of 2008, the instant appeal has been filed by the Appellant / Insurance Company.

4. Heard Mrs.R.Srividya learned counsel for the Appellant and Mr. K.Kuppusamy learned counsel for the first respondent.

5. According to the learned counsel for the Appellant, the primary ground for challenge in the instant appeal is that the driver of the vehicle which was insured with the Appellant, did not possess a valid driving licence. There is no valid endorsement in the said driving licence of the driver to drive a motor cycle. The learned counsel for the Appellant submitted that the appeal was filed in the year 2010 and the issue raised in the appeal has now been covered by the Judgment of 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, wherein the Hon'ble Supreme Court has held that where there is a violation of policy condition, the insurer will have to pay the claimant and recover the same from the owner of the vehicle. The relevant portion of the Judgment of the Hon'ble Supreme Court is extracted hereunder:

> " 17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,
>
> (i) the vehicle was not driven by a named person,
>
> (ii) it was being driven by a person who was not having a duly granted licence, and
>
> (iii) person driving the vehicle was disqualified to hold and obtain a driving licence.
>
> Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to

drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

6. As seen from the impugned Award, the rights of the Appellant has been fully protected to recover the compensation amount paid to the first respondent/claimant from the owner of the vehicle namely the second respondent. In view of the Judgment of the Hon'ble Supreme Court referred to "supra", there is no merit in the instant appeal. Accordingly the appeal is dismissed with no costs. The first respondent/claimant is permitted to withdraw the amount together with the accrued interest lying to the credit of M.C.O.P.No.451 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Salem by filing an appropriate application. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
Motor Accident Claims Tribunal, Salem.

2. The Record Clerk, VR Section,
High Court, Chennai.(2 Copies)

+1cc to Mr.K.Kuppusamy, Advocate SR.No.58046

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.58445

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GMY(09/10/2018)