

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM

THE HONOURABLE MS. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3256 of 2010

M.P.No.1 of 2010

M/s.United India Insurance Co.Ltd.,
The Branch Office,
R.P.R.Complex, By Pass Road,
Near Government Hospital,
Dharmapurai-636 701.

... Appellant/2nd Respondent

..Vs..

1.P.Manickam
2.M.Narayanappa

(2nd respondent ex parte in Lower Court
And hence notice may be dispensed with)

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.A.C..O.P.No.397 of 2007, dated 23.03.2010, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.R.Mohan Babu
for Mr.M.B.Gopalan

For Respondent 1 : R.Marudha Chalamurthy
For Respondent 2 : Ex Parte

J U D G M E N T

The instant appeal has been filed challenging the Award dated 23.03.2010 passed by the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri in M.C.O.P No.397 of 2007.

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

2. The first respondent sustained injuries as a result of an accident that took place on 08.05.2007 caused by a two wheeler namely Yamaha Crux bearing Registration No.TN-24-X-4258 insured with the appellant. The first respondent preferred a

compensation claim for a sum of Rs.3,00,000/-before the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri, in MCOP. No. 397 of 2007. The Tribunal by its award dated 23.03.2010 passed in MCOP No.397 of 2007 directed the Appellant as well as the second respondent jointly and severally to pay the first respondent a sum of Rs.66,000/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation and also awarded costs.

3. Aggrieved by the Award dated 23.03.2010 passed by the Motor Accident Claims Tribunal, Subordinate Court Sankagiri, in MCOP.No.397 of 2007, the instant appeal has been filed by the Appellant / Insurance Company.

4. Heard Mr.R.Mohan Babu, learned counsel for the appellant and Mr.R.Marudhachalamurthy, learned counsel for the first respondent. Despite service of notice on the second respondent and the name of the second respondent having been printed in the cause list today, none appears on behalf of the second respondent. The second respondent has remained ex parte even before the Tribunal.

5. According to the learned counsel for the Appellant, the primary ground for challenge in the instant appeal is that the doctrine of pay and recovery was not applied by the Tribunal, even though the driver of the vehicle which caused the accident did not possess a valid driving licence. The learned counsel for the Appellant drew the attention of this Court to the counter filed by the appellant before the tribunal wherein they have categorically stated that the driver of the vehicle did not possess a valid driving licence.

6. The learned counsel for the Appellant drew the attention of this Court to the evidence let in by the Regional Transport Office, Sangagiri who was examined by the appellant as RW-2 who has deposed that he does not know as to whether the driver of the vehicle is having a valid driving licence or not, at the time of accident. According to the learned counsel for the appellant, as the driver of the vehicle may have applied for driving licence with some other Regional Transport Office, it cannot be construed based on the statement made by RW2 that he has having a valid driving licence. As seen from the records, it has been the consistent stand of the Appellant/Insurance Company that the driver of the vehicle one Palaniappan did not possess a valid driving licence, at the time of the accident.

7. Therefore, in the considered view of this Court, the Tribunal ought to have applied the doctrine of pay and recovery under the impugned award. The second respondent being the owner of the vehicle is liable for the acts of his driver who caused accident which resulted in injuries sustained by the first respondent. The second respondent has also not responded to the notice dated 12.08.2007 which was marked as Ex.R2 sent by the

Appellant calling upon the second respondent to produce a copy of the licence. Therefore, the doctrine of pay and recovery ought to have been applied, but the Tribunal has erroneously not granted the same to the Appellant.

8. In the result, the appeal is partly allowed without costs and the Appellant is directed to deposit the award amount passed by the Tribunal along with the interest, after deducting the amount that has already been deposited, to the credit of MCOP. No.397 of 2007 on the file of the Motor Accident Claims Tribunal, Sankagiri within a period of four weeks from the date of receipt of a copy of this Order and recover the same from the second respondent who is the owner of the vehicle. On such deposit being made, the first respondent is permitted to withdraw the amount lying to the credit of MCOP. No.397 of 2007 on the file of the Motor Accident Claims Tribunal, Sankagiri by filing an appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kyl/nl

To

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

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

+lcc to Mr.M.B.Gopalan, Advocate sr.no.60561

+lcc to R.Marudha Chalamurthy, Advocate sr.no.60331

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