

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.572 of 2008

United India Insurance Co.Ltd.,
Branch Office,
No.8/1 - 31 A, Salem Main,
Puduchampalli, Mettur Dam,
Salem District

...2nd Respondent/Appellant

Vs

1. Mr.S.Madhurajan
2.Mrs.S. Thilagam

..Petitioner/1st Respondent/
1st Respondent/2nd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1998 against the award and decree dated 20.10.2005 made in M.C.O.P. 852 of 2004 on the file of the Motor accident claims Tribunal (Additional District Judge) Fast Track Court II, Salem.

For Appellant : Mr.T. Ravichandran

For Respondents : M/s. MA.P.Thangavel for (R1)
M/s. R. Syed Mursafa for R2

JUDGEMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 20.10.2005 passed in MCOP No.852 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Tract Court-II),Salem

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

(i) The 2nd respondent herein is the owner of the vehicle bearing Registration No.TN-28-X-7070 and the said vehicle has been insured with the appellant Insurance Company.

(ii) The 1st respondent/claimant preferred a claim petition before the tribunal alleging that the above said vehicle had hit the 1st respondent on 26.1.2004 and caused injuries to him.

(iii) The Tribunal, by its award dated 20.10.2005, directed the appellant/Insurance Company to pay a sum of Rs1,12,313/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iv) Aggrieved by the Award of the tribunal, the instant Civil Miscellaneous Appeal has been filed.

3. Heard Mr..Mr.T. Ravichandran, learned counsel for the appellant and Mr.MA.P.Thangavel, learned counsel for the 1st respondent and Mr. R. Syed Mursafa, learned counsel for the 2nd respondent.

4. According to the learned counsel for the appellant, the vehicle which was involved in the accident did not have fitness certificate on the date of the accident. According to him, it is also the admitted case of the 2nd respondent as seen from the evidence placed before the tribunal that the vehicle did not have fitness certificate. Therefore, according to the learned counsel for the appellant, the tribunal ought to have directed the appellant to pay the compensation to the 1st respondent and recover the same from the 2nd respondent Insurance Company.

5. Learned counsel for the appellant has relied upon the judgments of the Honourable Supreme Court in the case of Rani and others Vs National Insurance Company Ltd and others reported in (CDJ 2018 SC 793) and a Division Bench Judgment of this Court in the case of Iffco Tokyo General Insurance Co. Ltd. Vs. A. Jafer Sadiq & others reported in CDJ 2012 MHC 2293 and the decision of a learned Single Judge of this Court in the case of United India Insurance Company Limited, Branch office, Dharmapuri Vs. Sidheshwaran and another reported in CDJ 2017 MHC 5242 to emphasise his contention that when the vehicle is not having a valid permit or fitness certificate at the time of accident, pay and recovery ought to have been granted in favour of the Insurance Company.

6. Learned Single Judge of this Court in the judgment relied upon by the learned counsel for the appellant in the case reported in CDJ 2017 MHC 5242 (cited supra), after following the Division Bench judgment of this Court reported in CDJ 2012 MHC 2293 referred to supra, has held that when there is no pleading to the effect that the ambulance had Fitness Certificate on the date of accident, the obligation of Insurance Company to meet liability arises out of use of vehicle on public road governed solely by contract of insurance, and if question arises whether there was any violation of policy condition, initial burden is on Insurance Company to provide facts concerning it, and once it is so provided, burden shifts to insurer/owner of the vehicle to provide necessary particulars to disprove the same.

7. In that case, the appellant/Insurance Company was directed to pay compensation amount determined by the tribunal and thereafter, recover the same from the owner of the vehicle involved in the accident.

8. In the instant case, according to the learned counsel for the appellant there was no fitness certificate for the vehicle on the date of the accident.

9. Applying the decisions referred to above, the learned counsel for the appellant submits that the tribunal has erroneously passed the Award permitting the appellant to pay the compensation amount and recover the same from the owner of the vehicle.

10. Per contra, the learned counsel for the 2nd respondent/owner of the vehicle submits that the Award passed by the tribunal is only in accordance with law. He submits that even though fitness certificate was not available earlier, only due to its expiry, the 2nd respondent could not file the same and mark it as an exhibit before the tribunal. Therefore, according to him, there is no infirmity in the Award passed by the tribunal.

11. This court, after considering the materials available on record, including the Award under challenge and after hearing the submissions of the respective counsels, observes the following;

a) It is undisputed fact that there was no fitness certificate. The appellant had also raised this contention in its additional counter filed before the tribunal. Despite raising such contention that no fitness certificate was available on the date of accident, the tribunal has not framed any issue on that score.

b) As seen from the judgments referred to by the learned counsel for the appellant, it is clear that there is no fitness certificate for the vehicle and pay and recovery doctrine ought to have been applied by the tribunal. In the instant case, the said doctrine was not applied, but instead, the tribunal directed the appellant to pay the award amount without granting liberty to the appellant to pay the said sum and recover the same from the owner of the vehicle.

12. In view of the above observations recorded by this court, the appeal is partly allowed and the judgment and decree dated 20.10.2005 passed by the tribunal in MCOP.No.852 of 2004 is hereby modified by directing the appellant to pay the

compensation amount together with interest as awarded by the tribunal and recover the same from the 2nd respondent who is the owner of the vehicle.

13. Since the entire award amount has been deposited by the appellant before the tribunal, the 1st respondent/claimant is permitted to withdraw the same before the tribunal by filing appropriate application. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

msr/nl

To

The Additional District Judge,
(MACT) Fast Track Court No.II, Salem.

+1cc to Mr.T.Ravichandran, Advocate SR.No.56158

+1cc to Mr.M.R.Thangavel, Advocate SR.No.56139

+1cc to Mr.MA.P.Thangavel Advocate SR.No.56472

C.M.A.No.572 of 2008

GMV (25/09/2018)

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