

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2095 of 2011
and
M.P.No.1 of 2011

M/s.United India Insurance Company Limited,
Branch Ofifce
Door No.104-A, T.S.No.1817,
Neela South street,
Nagapattinam

.. Appellant/4the Respondent

Vs.

1.S.A.Khadar

.. 1st Respondent/Petitioner

2.M.P.Buckdrudeen

3.Branch Manager,

M/s.Bajaj Allianz General Insurance Company
Limited, Pune

(Sl.No.2 and 3 were given up) .. 2&3 Respondents/1&2 Respondents

4.T.S.Ravi

.. 4th Respondent/3rd Respondent

(R4 Exparte in the lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.01.2008 made in M.C.O.P.No.136 of 2005 on the file of the Motor Accident Claims Tribunal (subordinate Judge) at Tiruvarur.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.N.S.Nageswaran

JUDGMENT

The fourth respondent-Insurance Company before the Tribunal, is the appellant herein. This Civil Miscellaneous Appeal has been filed against the order and Decree dated 21.01.2008 made in M.C.O.P.No.136 of 2005 on the file of the Motor Accident Claims Tribunal (subordinate Judge) at Tiruvarur.

2. The first respondent-claimant herein has preferred M.C.O.P.No.136 of 2005 on the file of the learned Subordinate Judge, Tiruvarur stating that he was travelling in TN 50 B 8442 Bajaj Motor vehicle and due to the rash and negligent driving of the offending vehicle namely TN 50 A 0075, owned by the third respondent, insured with the fourth respondent before the Tribunal, has caused accident, thereby, he sustained multiple injuries and claimed the compensation.

3. After trial, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the third respondent before the Tribunal and accordingly held that R3 and R4 before the Tribunal are jointly and severally liable to pay the compensation and exonerated R1 and R2 before the Tribunal.

4. Aggrieved by the said finding, the fourth respondent-Insurance Company before the Tribunal, has preferred this appeal.

5. The learned counsel for the appellant-Insurance Company has submitted that at the time of the accident, the driver of the fourth respondent herein, who drove the two wheeler, does not possessed valid licence and reliance is placed upon the police records, namely the charge sheet and Exhibits P3 and P4 Motor vehicle's report and it was contended that on the ground that while Exhibit P3 Motor Vehicle report was prepared at the time of the inspection by the Motor Vehicle inspection, the licence was not produced and they relied upon only the charge sheet filed by the police.

6. After investigation of the crime, Exhibit R1 was prepared and it is contended that at the time of the accident, the driver of the offending vehicle does not possess valid driving licence. This Court is unable to affix the seal of the approval of the said contention on the ground that mere reliance on the police report does not suffice to come to a decision. The Insurance Company would contend that the driver of the offending vehicle does not possess valid driving licence at the time of the accident. Either the driver should have been summoned to produce or summoned the document from the R.T.O office to substantiate the said plea.

7. In the absence of any positive evidence to show that the driver of the offending vehicle does not possess valid driving licence at the time of the accident. The Tribunal has rightly held not discharged and the onus is on the part of the Insurance Company to prove that the driver had valid driving licence and

such a finding by the Tribunal is well considered and well merited and in the absence of any documents, the same is hereby confirmed.

8. In such view of the matter, this Civil Miscellaneous Appeal is dismissed. The Insurance Company shall deposit the compensation if not deposited already, before the Tribunal. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvi

To
The Motor Accident Claims Tribunal (subordinate Judge)
at Tiruvarur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.N.S.Nageswaran, Advocate, Sr.No. 16913

+1 cc to M/s.D.Bhaskaran, Advocate, Sr.No. 16395

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CSL/09.05.2019

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