IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2019
CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2609 of 2011
and
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
19, Andiappa Gramani Street,
Royapuram,
Chennai-13. ... Appellant/2nd Respondent

vs.

1.K.Joshuva ..1st Petitioner/ Petitioner
2.L.Kumar ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 19.06.2009 made in M.C.O.P.No.142 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tiruvallur.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.V.Perumal for R1
No appearance for R2

J U D G M E N T

The appellant / Insurance Company is the 2nd respondent in M.C.O.P.No.142 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tiruvallur. The first respondent / claimant filed the claim petition under Section 166 and 140 of the Motor Vehicles Act, 1988 and Rule 3 of Motor Accident Claims Tribunal Rules seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 30.12.2007.

2. The case of the claimant in nutshell is as follows:
On 30.12.2007, the claimant was travelling as a passenger in an Auto bearing Registration No.TN-20-AF-6287 on Perambakkam - Tiruvallur Road and at about 15.00 hours, when the auto was nearing Anna Theatre, the driver of the auto drove the vehicle rashly and negligently and hit a motor cycle, as a result of which, the claimant sustained grievous injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the Auto belonging to the 1st respondent was the cause for the accident and that since the said vehicle was insured with the present appellant, the owner and the insurer of the Auto are jointly and severally liable to pay compensation.

4. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Tiruvallur, while awarding a compensation of Rs.45,000/- together with interest at the rate of 7.5% per annum to the claimant, also held that the owner and the insurer of the Auto are jointly and severally liable to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.V.Perumal, learned counsel appearing for the 1st respondent. No appearance for the 2nd respondent.

6. Mr.S.Arunkumar, learned counsel would contend that since the driver of the Auto was not in possession of a valid driving licence on the date of accident, the Tribunal was wrong in mulcting liability on the part of the Insurance Company.

7. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna and another vs. Divisional Manager, The Oriental Insurance Co. Ltd., and others in Civil Appeal No. 8144 of 2018, reported in 2018 (2) TN MAC 151 (SC), and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

8. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Insurance Company to pay the award amount jointly and severally is liable to be set aside. However, the Insurance Company is directed to pay the award amount to the first respondent / claimant in the first instance and then recover the same from the 2nd respondent / owner of the Auto bearing Registration No.TN-20-AF-6287.

9. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection / appeal was filed by the claimant. A perusal of the award also shows that it is not disproportionate to the injuries sustained by the claimant.

10.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The present appellant / United India Insurance Company Ltd., is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.45,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.142 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Tiruvallur, within a period of four weeks from the date of receipt of a copy of this judgment and then recover the same from the 2nd respondent/owner of the Auto bearing Registration No.TN-20-AF-6287 on the same cause of action.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Tiruvallur.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 94753
+1cc to Mr.Vl.Perumal , Advocate SR.No. 95363

CMA.No.2609 of 2011
and
M.P.No.1 of 2011

A.SK(02/09/2020)