IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3671 of 2011
and
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
Having Office at J.N.Street,
Pondicherry. ... Appellant /2nd Respondent

vs.

1.Minor Binu Francis ...1st Respondent/Petitioner
(Minor represented by his father, next friend natural guardian Gaspar)

2.N.Muthu Raj ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Award dated 30.06.2011 made in MCOP.No.758 of 2006 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Pondicherry.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance

J U D G M E N T

The appellant / United India Insurance Co. Ltd., is the second respondent in MCOP.No.758 of 2006 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Pondicherry. The 1st respondent filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident on 21.06.2006.

2. The case of the claimant in nutshell is as follows:

On 21.06.2006, at about 2.15 p.m., when the claimant was riding bicycle along Uppalam Road, opposite to Indira Gandhi Stadium, Pondicherry, a speeding motorcycle bearing Registration No.PY-01-AD-2363 hit her, as a result of which, she was thrown out and sustained grievous injuries all over her body. According to the claimant, the accident took place due to the rash and negligent riding of the rider of the motorcycle bearing Registration No.PY-01-AD-2363, belonging to the second respondent and that since the said motorcycle was insured with the present appellant, both the owner and the insurer are jointly and severally liable to pay compensation.

3. The Motor Accident Claims Tribunal / Additional Subordinate Judge, Pondicherry, while awarding compensation of Rs.35,000/- together with interest at the rate of 7.5% per annum to the claimant, also concluded that since the rider of the motor cycle was not in possession of a valid driving licence on the date of the accident, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the motor cycle. Aggrieved over the orders passed by the Tribunal, the United India Insurance Co. Ltd., has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant. No appearance for the respondents.

5. 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).

6. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the United India Insurance Co. Ltd., to pay the award amount in the first instance and then recover the same from the owner of the motor cycle is perfectly in order.

7. 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 or appeal was filed by the

claimant. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeal fails and it is liable to be dismissed.

8. In the result,

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

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / United India Insurance Co. Ltd., is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.35,000/- (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 MCOP.No.758 of 2006 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Pondicherry, within a period of four weeks from the date of receipt of a copy of this judgment and then recover the same from the owner of the Motor Cycle bearing Registration No.PY-01-AD-2363 on the same cause of action.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Additional Subordinate Judge,
Pondicherry.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.93463

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