IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.637 of 2011 and
M.P.No.1 of 2011

United India Insurance Company Limited,
No.38, Anna Salai, Chennai-2. ...Appellant/2nd Respondent

Vs.

1.T.Manoharan ...1st Respondent/Petitioner
2.J.Jayakumar
(R2 set exparte before the Tribunal)
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.03.2010, in M.C.O.P.No. 2307 of 2006 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy

For R1 : No appearance

For R2 : Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging the order and decree passed in M.C.O.P.No. 2307 of 2006 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes) at Chennai.

2. The Insurance Company before the Tribunal is the appellant herein, challenging the liability on the ground that the driver of the two wheeler had not possessed valid driving licence on the date of the accident.

3. The brief case of the first respondent/claimant is as follows:

On 18.04.2006, at about 15.45 hours, when the first respondent/claimant was proceeding in the Motorcycle bearing Registration No.TN 27 U 7174 along K.K.Nagar, Munusamy Salai from South to North direction, another Motorcycle bearing Registration No.TN 09 AP 4576 came behind in a rash and negligent manner without following traffic rules and regulations and hit against the first respondent's motorcycle, due to which, the first respondent/claimant was thrown out and dashed against a bus bearing Registration No. TN 01 N 3164 which was going ahead and thereby the claimant sustained grievous injuries. The accident occurred due to breakneck speed and reckless driving of the motorcycle bearing Registration No.TN 09 AP 4576.

4. The Insurance Company as the second respondent before the Tribunal filed a counter statement wherein, they have specifically raised a plea that on the date of the accident, the rider of the two wheeler namely the rider of the two wheeler does not possess valid driving licence and that the offending motorcycle, dashed against the proceeding bus moving head of the bus is having registration No.TN 01 3164 and hence, the Insurance Company is not liable to pay the compensation.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exhibits P1 to P10 were marked. On behalf of the respondent, R.W.1 was examined and Exhibits R1 and R2 were marked.

6. On consideration of both oral and documentary evidence and also taking note of the contents of Exhibit P1-F.I.R and Exhibit P8-Rough Sketch, the Tribunal has held that the version of P.W.1 is in confirmity with contents of Exhibit P1-F.I.R and in the absence of the contra evidence, the Tribunal has held that due to the dashing of the motorcycle bearing Registration No.TN 09 AP 4576 owned by the first respondent, which was insured with the appellant/Insurance Company, the accident has taken place and accordingly, the Tribunal has held that the rider namely the offending vehicle was at negligence and consequently, fastened the liability upon the respondents 1&2 therein and based upon the evidence available before the Court by way of P.W.2 and Exhibit P9, assessed the liability and quantum and arrived at a sum of Rs.2,04,675/- as compensation, which is hereby confirmed.

7. Aggrieved by the said finding, the Insurance Company has filed this appeal alleging that on the date of the accident, the driver of the offending two wheeler, does not possess valid driving licence and the Insurance Company may be

exonerated.

8. The learned counsel for the appellant/Insurance Company would submit that as per Exhibit R1 charge sheet, the driver of the offending two wheeler, does not possess valid and effective driving licence and he was also charged for rash and negligence under the Motor Vehicles Act.

9. After perusing the charge sheet-Exhibit R1, this Court is of the considered view that the driver of the offending vehicle, has not possessed the driving licence at the time of the accident and hence, it amounts to violation of terms and conditions of Exhibit R2 policy. Accordingly, this Court has no hesitation to hold that the Insurance Company is not liable. However, as per the settled law, the Insurance Company is at liberty to recover the same from the owner of the vehicle after paying the award amount.

10. With these observations, this Civil Miscellaneous Appeal is partly allowed. No costs. The Insurance Company is directed to deposit the balance amount if any within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the same in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//
Sub Assistant Registrar

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To
1.The VI Judge, The Motor Accidents Claims Tribunal
Court of Small Causes at Chennai.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.35446

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SSD(CO)
CB(27/02/2020)