IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.355 of 2015
and M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Divisional Office-II
No.104-A, Peramanur Main Road
Salem 636 007. ...Appellant/2nd Respondent

Vs.

1.T.Uma Nagalakshmi ...1st Respondent/petitioner
2.J.Ganapathy ...2nd Respondents/
1st respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.06.2014 made in MCOP No.2033 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge No.II) at Salem.

For Appellant : Ms.R.Sree Vidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,21,500/- towards compensation to the first respondent, due to the injuries sustained by her in a motor vehicle accident.

2.The case in brief, is as follows:

On 27.07.2011 at about 9.30 a.m., the first respondent was riding her motorcycle bearing Reg.No.TN-30-E-2485 on the Salem-Bangalore National Highways. When she started the motorcycle after getting the signal on that road, the Tata Ace van bearing Reg.No.TN34 D-8475 belonging to the second respondent herein and insured with the appellant Insurance Company came in a rash and negligent manner and dashed against the first respondent. Due to the impact, she sustained multiple fractures and injuries. She filed a claim petition before the Tribunal claiming a sum of Rs.15,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,21,500/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the Appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant-Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But she submitted that the driver of the van was not having the valid and effective driving licence to drive the van and hence the Insurance Company is not liable to pay any compensation to the first respondent / claimant.

5.Though this appeal was admitted way back in the year 2015, the appellant Insurance Company has not taken proper steps to serve papers on the other side, even at this length of time.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

8.It was put forth on behalf of the first respondent/P.W.1 before the Tribunal that at the time of accident, the driver of the mini van drove the van rashly and negligently without following any traffic rules and dashed against her motorcycle, while she was starting her vehicle after getting the signal. No eye-witnesses have been examined on the side of the appellant Insurance Company to disprove the said contention of the first respondent. In the circumstances, based upon the evidence of the first respondent / P.W.1 corroborated with Ex.P1-First Information Report, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van and fixed the liability on the appellant Insurance Company, being the insurer of the van. This Court is not inclined to interfere with the finding of the Tribunal with regard to negligence on the part of the van driver. But, with regard to the contention put forth on the side of the Insurance Company that the driver was not having the valid driving licence to drive the van, since he was having driving licence only to drive light motor vehicle and not commercial transport vehicle, the Tribunal has relied upon the decision of the Hon'ble Supreme Court in the case of S.Iyyappan v. United India Insurance Co.Ltd. and another, reported in 2013 ACJ 1944 (SC), and held that the said judgment applies to the case on hand and hence the Insurance Company is liable to pay compensation to the claimant, being the insurer of the van. In the said judgment, it has been held that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive light passenger carriage vehicle, viz. Matador, the vehicle involved therein. The vehicle involved in the present case is Tata Ace, which has been used for commercial purpose without having the requisite badge by the driver to drive a commercial vehicle. In the circumstances, this Court deems it fit to direct the Insurance Company to pay compensation to the claimant and thereafter recover the same from the owner of the vehicle.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/ Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amount, in the manner known to law.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

kas/km

To.

1. Motor Accidents Claims Tribunal,
The Special Subordinate Judge No.II
Salem.

Copy to

The Section Officer
VR Section
Madras High Court.

+1 cc to Ms.R.sree Vidya Advocate sr86273

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