

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.3769 and 3770 of 2013

The Branch Manager,
M/s.Iffco Tokio General Insurance Co. Ltd.,
Thulasi Chambers, 3rd Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore.

...Appellant in both C.M.As/2nd Respondent

vs.

1.Duraisamy ... 1st Respondent in C.M.A.No.3769
of 2013/Petitioner

1.Pushpavathy ... 1st Respondent in C.M.A.No.3770
of 2013/Petitioner

2.M/s.Best Paper Packing,
Rep. By its Proprietor,
No.165/B, D.S.P.Garden,
Andipalayam, Tiruppur.

...2nd Respondent in both
C.M.As/1st Respondent

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 23.08.2012 passed in M.C.O.P.Nos.855 and 858 of 2010 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tiruppur.

Appellant in both CMAs	: Mr.N.Vijayaraghavan
R1 in both CMAs	: Mr.Ma.Pa.Thangavel
R2 in both CMAs	: No appearance

C O M M O N J U D G M E N T

The appellant / the Branch Manager, Iffco Tokio General Insurance Company Limited is the second respondent in both M.C.O.P.Nos.855 and 858 of 2010 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tiruppur. The claimants filed the above M.C.O.Ps seeking compensation of Rs.10,00,000/- and Rs.5,00,000/- respectively for the injuries sustained by them, in a road accident on 12.07.2010.

2. The parties are referred as per their ranking in the claim petitions and at appropriate places, their ranks in the present appeals would also be indicated.

3. The case of the claimants is that on 12.07.2010, when they were travelling in a motorcycle bearing Registration No.TN 39 U 6097 on Tirupur - Kangayam road at about 17.30 hours, a speeding van bearing Registration No. TN 39 AC 8584 hit their two wheeler, as a result whereof, they sustained injuries all over their body.

4. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration No. TN 39 AC 8584, belonging to the second respondent was the cause of the accident and that since, the said van was insured with the appellant / Iffco Tokio General Insurance Company Limited, the owner of the van and the insurer are jointly and severally liable to pay compensation to them.

5. The owner of the van remained absent before the Tribunal and therefore he was set exparte. The appellant / Iffco Tokio General Insurance Company Limited, contested the claim petition on all the grounds available to the insurer and the learned I Additional District Judge / Motor Accident Claims Tribunal, Tiruppur while awarding compensation of Rs.3,54,440/- and Rs.21,131/- respectively together with interest at the rate of 7.5% per annum to the claimants, concluded that since the driver of the van 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 van. Aggrieved over the orders passed by the Tribunal, the appellant / Iffco Tokio General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant and Mr.Ma.Pa.Thangavel, learned counsel appearing for the first respondent. No appearance on behalf of the second respondent.

7. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The New India Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, 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 a 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 cases, the orders passed by the Tribunal directing the Iffco Tokio General Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the van is perfectly in order.

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 or appeal were filed by the claimants. A perusal of the Award also shows that it is not on the higher side and in the facts and circumstances, the appeals fail and are dismissed.

10. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs.

(ii) The orders passed by the Tribunal are upheld.

(iii) The Iffco Tokio General Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.3,54,440/- and Rs.21,131/- (less the amount already deposited) 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.Nos.855 and 858 of 2010 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Tiruppur within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the van / the second respondent, on the same cause of action.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Tiruppur.

2.The Section Officer,
VR Section, High Court, Madras-104.

+2cc to M/s.M.B.Gopalan, Advocate Sr.89920 & 89921
+1cc to M/s.Ma.P.Thangavel, Advocate Sr.89751

CMA.Nos.3769 and 3770 of 2013

cp[co]
srg 20/02/2020