

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.949 of 2013

The Divisional Manager,
National Insurance Co. Ltd.,
Pondicherry 605 001.

...Appellant
.Vs.

1.V.Iyappan @ Suresh
2.N.Vijayaraghavan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.09.2012 passed in MCOP.No.2294 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Cuddalore.

For Appellant : Mr.M.Krishnamurthy

For Respondents : M/s.Sreeta Law Firm
for Mr.R.Sreedhar for R1
No appearance for R2

JUDGMENT

The appellant is the second respondent in MCOP.No.2294 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Cuddalore. The first respondent filed the said claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 10.07.2007.

2. The case of the claimant is that on 10.07.2007, he was riding a TVS XL Super Moped bearing Registration No.TN 31 H 4235 with one Balu as pillion rider on Vadalur - Cuddalore main road and at about 19.00 hours, a speeding motorcycle bearing Registration No.PY 01 AJ 9621 belonging to the second respondent and insured with the present appellant, hit his motorcycle, as a result of which, he and the pillion rider Balu, fell down. While the claimant sustained injuries all over his body, Balu died on

the spot. The further contention of the claimant is that the rash and negligent riding of the rider of the two wheeler bearing No.PY 01 AJ 9621, was the cause of the accident and that since the said motorcycle was insured with the present appellant, both of them are jointly and severally liable to pay a compensation of Rs.8,00,000/-.

3. The second respondent, the owner of the motorcycle bearing Registration No.PY 01 AJ 9621 remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant, National Insurance Company Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / Principal Subordinate Judge, Cuddalore after analysing the evidence on record, awarded a compensation of Rs.2,72,280/- together with interest at the rate of 7.5% per annum. The Tribunal further held that since, the rider of the motorcycle bearing Registration No.PY 01 AJ 9621 did not possess a valid driving license on the date of accident, the appellant, National Insurance Company Limited, was directed to pay compensation at the first instance and then recover the same from the second respondent / owner of the vehicle. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. As per the decision rendered in Kempaiah and others vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC) when there is no valid driving license to drive a transport vehicle as on date of the accident, the Insurance Company should be directed to satisfy the Award with liberty to recover the same from the owner. In the said decision, the decision of the Hon'ble Supreme Court in National Insurance Company Limited vs. Swaran Singh reported in 2004 (1) TN MAC 104 (SC) : 2004 (3) SCC 297 has been referred. The Doctrine of "Pay and Recover" was considered by the Supreme Court in Swaran Singh case (cited supra) wherein the Supreme Court examined the liability of the insurance company in cases of breach of Policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured.

5. In the light of the above decisions, I do not see any infirmity in the orders passed by the Tribunal.

6. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

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

(iii) The present appellant, National Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.2,72,280/- (less the amount already deposited) together with interest at the rate of 7.5% per annum, at the first instance to the credit of MCOP.No.2294 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Cuddalore within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the insured.

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

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Cuddalore.

+1 cc to M/s.M.Krishnamoorthy Advocate sr82410

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