IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.653 of 2018
and C.M.P.No.5839 of 2018

United India Insurance Company Ltd.,
represented by its Divisional Office-1,
104-A, Peramanoor main road,
Salem - 7.

... Appellant/2nd Respondent

Vs

1. G Sundararaj .... 1st Respondent/Petitioner
2. V.Thiruppathi ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.08.2017 made in M.C.O.P.No.612 of 2011 on the file of the Motor Accident Claims Tribunal, (II Additional Subordinate Judge), Salem.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.S.P.Yuvaraj

For R2 : set exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.2,52,256/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 24.01.2011 about 4.30 pm, the first respondent/claimant was riding the motorcycle bearing Reg.No.TN-34-K-9402 from Mettur to Bhavani Sagar. When the two-wheeler reached near M.I.T College at Karungadu, another motorcycle bearing Reg.No.TN-56-3665 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motorcycle bearing Reg. No.TN-34-K-9402. Due to the said impact, the first respondent fell down and sustained grievous injuries all over the body. He filed a claim petition claiming compensation of Rs.7,00,000/- before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,52,256/- with interest at the rate of 7.5% per annum from the date of petition. Questioning the liability fixed on the appellant Insurance Company, the present appeal came to be filed.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the Tribunal has erred in fixing the entire liability on the appellant Insurance Company, since the rider of the motorcycle bearing Reg.No.TN-56-3665 was not possessing the valid and effective driving licence and hence, the Insurance Company is not liable to pay any compensation to the first respondent/claimant.

4.The learned counsel for the first respondent/claimant has submitted that the Tribunal has rightly considered the materials and evidence and has passed the impugned judgment and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6.Ex.P1-First Information Report was registered against the rider of the motorcycle bearing Reg.No.TN-56-3665 stating that he was responsible for the accident, which corroborates with the evidence of P.W.1/claimant. Considering the materials and evidence available on record, particularly relying upon Ex.P3-Motor Vehicle Inspection Report of the offending vehicle and Ex.P4-Motor Vehicle Inspection Report of the claimant's vehicle, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the rider of the motorcycle bearing Reg.No.TN-56-3665 insured with the appellant insurance company. Stating so, the Tribunal has fixed the liability on the Appellant Insurance Company, being the insurer for the said vehicle. In this connection, it has to be noted that in the Motor Vehicle Inspection Report pertaining to the two-wheeler bearing Reg.No.TN-56-3665, it has been mentioned that the rider of the said two-wheeler was not possessing the valid driving licence to drive the vehicle. But, the Tribunal has not analysed this issue in detail and has simply stated that these are inter disputes and the same have to be decided in separate proceedings. This Court is of the view that the Tribunal ought to have permitted the appellant Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions by the owner of the motorcycle bearing Reg.No.TN-56-3665, by allowing a person to ride the vehicle without proper and valid driving licence. Hence, it is hereby ordered that the Insurance Company shall pay the compensation to the claimant and thereafter recover the same from the owner of the two-wheeler in accordance with law.

7.In the result, the Civil Miscellaneous Appeal is partly allowed. 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 four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit being made, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III MDU)

//True Copy//

Sub Assistant Registrar

av/km

To

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No. 90089
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 89849

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GP(CO)
GN(23/09/2020)