IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.469 of 2017
and C.M.P.No.1 of 2017

M/s. National Insurance Company Limited,
L.R.N. Colony,
Saradha College Main Road,
Hasthambatti, Salem - 7. ... Appellant/2nd Respondent

Vs

1.G.Pandurangan
2. J.Shankar ...2nd Respondent/Petitioner/1st Respondent/
Owner of the Vehicle

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.08.2016 made in M.C.O.P.No.107 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Salem.

For Appellant : Mr.N.B.Surekha

For R1 : Mr.T.Panchatsaram

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.2,21,000/- 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 31.10.2012 about 12.00hours, the first respondent/claimant was riding his Motorcycle bearing Registration No.TN-20-E-2268. When he was proceeding near Nayanthara theatre, a Honda Motorcycle bearing Registration No.TN24-L-8454 belonging to the second respondent herein and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the Motorcycle bearing Registration No.TN-20-E-2268. 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.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,21,000/- with interest at the rate of 7.5% per annum from the respective dates of the 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 Regn.no.TN-24 L 8454 did not possess valid and effective driving license 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 submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation 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.Now the question to be decided is only with regard to the liability fixed on the part of the appellant Insurance Company by the Tribunal.

7.A perusal of the award would reveal that Ex.P1-First Information Report was registered against the rider of the motorcycle bearing Regn.No.TN24 L 8454 stating that he was responsible for the accident, which corroborated the evidence of P.W.1/claimant. Further, Ex.P7 charge sheet was also filed against him. Thereafter, the criminal case ended in conviction of the rider of the said motorcycle vide Ex.P15-Criminal Court judgement. Placing reliance on those materials and evidence, 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 Regn.No.TN24 L 8454 insured with the appellant insurance company. Stating so, the Tribunal fixed the liability on the part of the Appellant Insurance Company. This Court is of the opinion that while coming to such conclusion, the Tribunal failed to note that the rider of the motorcycle bearing Regn.No.TN24 L 8454 was not possessing valid driving licence at the time of accident. In such circumstances, 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 not possessing the valid driving licence by the rider of the motorcycle bearing Regn.No.TN24 L 8454. Therefore, this Court is inclined to modify the finding of the Tribunal to that effect. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

8.Accordingly, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amounts 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 by the insurance company, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal
   The Special Subordinate Court,
   Salem.

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

+1 CC to Mr.T.Panchatsaram, Advocate sr 77329.
+1 CC to M/s.N.B. Surekha, Advocate sr 76817.

C.M.A.No.469 of 2017
and C.M.P.No.1 of 2017

SVI(CO)
SP(04/06/2020)