IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.595 of 2017
and C.M.P.No.3503 of 2017

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
2nd Floor, Promnade Road,
Cantonment, Trichy - 1. ... Appellant /2nd Respondent

Vs

1. Abdul Muthalif ...1st Respondent/Claimant
2. T.Selvaraj
(R2 was set exparte before the Tribunal)
... 2nd Respondent/1st Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.07.2013 made in M.C.O.P.No.226 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.T.Gobinath

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,50,458/- 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 29.08.2010 about 4.30am, the first respondent/claimant and his wife were travelling in an auto rickshaw bearing Registration No.TN-31-AZ-6082 belonging to the second respondent and insured with the appellant insurance company. When the auto rickshaw was proceeding on Tiruchy-Chennai N.H.45 road, due to rash and negligent driving by its driver, the said vehicle hit a stationed tanker lorry bearing registration No.TN-52-Y-0519 from behind. Due to the said impact, the first respondent sustained grievous injuries all over the body. He filed a claim petition claiming compensation of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,50,458/- with interest at the rate of 7.5% per annum from the date of claim petition. Aggrieved over the same, the appellant insurance company has preferred this appeal.

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. According to him, since the driver of the auto rickshaw bearing Regn.no.TN-31 AZ 6082 did not possess valid and effective driving license, 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 driver of the auto rickshaw bearing Regn.no.TN-31 AZ 6082 stating that he was responsible for the accident, which corroborated the evidence of P.W.1/claimant. Further, Ex.P10 -Motor Vehicle Inspector's report reveals that the accident had not happened due to any mechanical defect of the auto rickshaw. As per Ex.P9 -insurance policy, it covers the risk of the offending vehicle. 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 driver of the auto rickshaw 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 driver of the auto rickshaw 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 driver of the auto rickshaw. Therefore, this Court is inclined to modify the finding of the Tribunal to that effect and is accordingly, modified. Except the same, there is no modification with regard to the quantum of compensation and the rate of interest 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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
The Principal District Court,
Perambalur.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.76992
+1cc to Mr.T.Gobinath, Advocate Sr.76952

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srg 22/07/2020