IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1212 of 2012
and
M.P.No.1 of 2012

The Branch Manager,
The Oriental Insurance Company Ltd.,
Gudiyatham. ... Appellant/
2nd Respondent

..Vs..

1.Kanthammal
2.R.Mohan ...Respondents/
Petitioner/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.12.2010 made in MCOP.No.121 of 2009, on the file of the Motor Accident Claims Tribunal Guidyatham, Vellore District/ In the Court of the Subordinate Judge, Gudiyatham, Vellore District.

For Appellant : Mrs.G.Sukumari
For Respondents: No Appearance for R1
R2 - Exparte

J U D G M E N T

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 23.12.2010 passed by the Motor Accident Claims Tribunal / Subordinate Judge, Guidyatham, in MCOP No.121 of 2009.

2. The Appellant Insurance Company has challenged the award only on the ground that the driver of the insured Auto Rickshaw bearing Registration No. TN 63 A 8721 was not possessing a driving license and hence, they are not liable to compensate the claim of the first respondent.

3. The Motor Accident Claims Tribunal under the impugned award has directed the Insurance Company to pay the first respondent/claimant, a compensation of Rs.1,00,000/- together with interest and costs for the injuries sustained by him as a result of an accident on 21.08.2007 caused by a vehicle insured with the Appellant.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Permanent Disability	70,000/-
Pain and suffering	25,000/-
Extra Nourishment	5,000/-
Total	1,00,000/-

5. Before the Tribunal, the first respondent/claimant has filed 11 documents which were marked as Ex.P1 to Ex.P11 and two witnesses were examined on her side namely, the first respondent/claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the Appellant, one document was filed namely, the certified copy of the Insurance policy (Ex.R1) and one witness was examined namely, the Insurance Company official as RW1.

6. The first respondent/claimant has filed the copy of the learner's license of the driver of the insured Auto Rickshaw which was marked as Ex.P7 before the Tribunal. The accident had happened on 21.08.2007. However, the learner's license (Ex.P7) was obtained by the driver of the insured Auto Rickshaw only on 29.09.2008, i.e after the accident. However, the second respondent, who is the owner of the Auto Rickshaw (insured vehicle) remained exparte before the Tribunal. It has been the consistent stand of the Appellant as seen from their pleadings as well as by their deposition that the driver of the insured Auto Rickshaw was not possessing a driving license at the time of the accident. The owner of the Auto Rickshaw has also failed to enter appearance before the Tribunal and has also not produced any evidence to prove that the driver of the Auto Rickshaw was possessing a driving license. The learner's license (Ex.P7) also reveals that the driver of the insured Auto Rickshaw had obtained the said license after more than one year from the date of the accident. All these factors will clearly reveal that the driver of the Auto Rickshaw was not possessing a driving license at the time of the accident. However, there was Insurance policy coverage for the said Auto Rickshaw as seen

from the insurance policy which was marked as Ex.R1 by the Appellant before the Tribunal. It is now settled law that whenever the driver of the insured vehicle was not possessing a driving license at the time of the accident, the Insurance Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). Accordingly, as seen from the impugned award, the Tribunal has rightly awarded pay and recovery rights to the Appellant and therefore, there is no scope for interference by this Court.

Conclusion:

7. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any to the credit of MCOP.No.121 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. The Appellant/Insurance Company is permitted to recover the said amount from the second respondent in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Gudiyatham. Vellore District.

2.The Section Officer
V.R.Section, High Court of Madras.

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AK(CO)
RMP(03/12/2020)