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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2391 of 2011
and M.P.No.1 of 2011

(Through Video Conferencing)

United Insurance Company Limited,
Rep.by its Manager,
No.24, Rathan Bazaar
Chennai 3.

... Appellant/2nd Respondent

vs.

1.Vijayan
2.S.Sudalaimuthu

...Responden/Petitioner
... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.317 of 2007 dated 06.01.2011 on the file of the Motor Accident Claims Tribunal (Additional District Court) Fast Track Court , Dharmapuri.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.M.Selvam

J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 06.01.2011 passed by the Motor Accidents Claims Tribunal, (Additional District Court) Fast Track Court , Dharmapuri in M.C.O.P.No.317 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,41,000/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st respondent/claimant. Aggrieved by the same, the appellant Insurance Company has been filed the present Civil Miscellaneous Appeal.



3. The appellant-Insurance Company contended that the driver of the offending vehicle did not possess a valid licence at that time of accident and the same amounted to violation of the policy condition. Therefore, the 2nd respondent has violated the policy conditions and thus the appellant/Insurance Company was not liable to pay any compensation to the 1st respondent. Hence, this appeal. It has prayed for setting aside the award of the Tribunal.

4. The main case of the appellant-Insurance Company is that the driver of the insured vehicle was not possessing valid licence. It is further submitted that the 2nd respondent's vehicle failed to appear before the Tribunal despite receipt of summons. Therefore the Tribunal ought to have drawn adverse inference against the 2nd respondent. It is further submitted that the Tribunal failed to note that unless the 1st respondent - claimant prove that there existed an enforceable contract against the appellant, the claim was not maintainable.

5. The learned counsel appearing for the 1st respondent-claimant submitted that the driver of the 2nd respondent drove the vehicle in a rash and negligent manner and dashed against the motorcycle. Since the insured vehicle was insured with the appellant, the appellant can pay and recover the amount from the 2nd respondent owner of the vehicle. He therefore, prayed for dismissal of this appeal.

6. I have perused the impugned Judgment and decree passed by the Tribunal and I have also perused the materials available on records.

7. In para-9 of the impugned order, the Tribunal has discussed factual aspect. Since the 2nd respondent owner of the vehicle did not chose to appear before the Tribunal, I am inclined to partially allow this appeal filed by the appellant-Insurance Company by ordering it to pay the compensation to the 1st respondent-claimant and recover the amount from the 2nd respondent owner of the insured vehicle as per the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

8. Therefore, the appellant Insurance Company is directed to deposit the award amount together with interest at 7.5% from the date of the claim petition till the date of deposit and cost, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit, the 1st respondent/claimant is entitled to withdraw the same together with interest, by filing suitable application before the Tribunal.



10. The appellant-Insurance Company may proceed to recover the aforesaid amount of compensation from the 2nd respondent owner of the vehicle as per the above decision of the Hon'ble Supreme Court.

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11. This Civil Miscellaneous Appeal stands partly allowed in terms of the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kkd

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

The Judge,
The Motor Accident Claims Tribunal
(Additional District Court)
Fast Track Court , Dharmapuri.

+1cc to Mr.M.Selvam, Advocate SR.42311
+1cc to Mr.S.Arunkumar, Advocate SR.42381

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VG-II(CO)
CB(09/09/2021)