

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.11.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2199 of 2015
and
M.P.No.1 of 2015

The United India Insurance Company Ltd.,
Divisional Office,
Dr.Sankaran Road,
Namakkal Town,
Namakkal District. Appellant/2nd Respondent

/versus/

1.Selvaraj1st Respondent/Claimant

2.Balasubramanian2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 14.08.2012 made in M.C.O.P.No.490 of 2010 on the file of the Additional District Judge, Namakkal.

For Appellant : Mrs.Sree Vidhya

For Respondents: No appearance for R1

: Ex-parte for R2

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the Insurance Company aggrieved by the award of the Tribunal fixing the liability on the Insurance Company, when the rider of the insured vehicle had no valid driving license.

2. On 11.05.2009, the claimant Selvaraj while walking along the Namakkal - Vellore Main road was hit by the two wheeler bearing registration No.TN 28 B 0294 driven by the 1st respondent Balasubramanian. The vehicle was insured under the appellant United India Insurance Company. Hence the claim petition was filed against the owner of the vehicle and the insurer seeking a sum of Rs.7,00,000/- as compensation.

3. The claim petition was contested by the Insurance Company on the specific ground that the rider of the two wheeler had no valid driving license. Therefore, there is a violation of policy condition and hence the Insurance Company is not liable to cover the risk. Further the quantum of compensation claim was also agitated by the Insurance Company.

4. Before the Tribunal, the claimant marked 17 documents to substantiate his claim. The respondents marked 3 documents, wherein, they have established that the rider of the offending vehicle had only four wheeler license and no endorsement to show that he is competent to drive two wheeler. The Tribunal had fixed the liability on the Insurance Company and has awarded Rs.2,55,000/-as compensation taking note of the period of treatment and percentage of disability sustained by the claimant.

5. In this appeal, the learned counsel appearing for the appellant would state that the Tribunal has miserably failed to address the plea of liability on the Insurance Company, when there is a patent violation of the policy condition. The 1st respondent who caused the accident did not possess the valid two wheeler license and therefore, he alone is liable to pay compensation and the Insurance Company cannot be fastened with liability to indemnify the vehicle owner.

6. No doubt, it is a clear case of policy violation where the Injured had no valid driving license. However following the dictum of the Hon'ble Supreme Court in the case of this nature, the Insurance Company is directed to pay the award amount and recover the same from the vehicle owner applying the principle of "Pay and Recovery".

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

rpl
To

The Additional District Judge, Namakkal.
Copy to:

The Section Officer, VR Section, High Court, Madras.
+1cc to M/s.R.Sree vidhaya , Advocate SR.No. 37045

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A.SK(15.03.2021)