

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1512 of 2015  
and M.P.No.1 of 2015

The Manager  
United India Insurance Co. Ltd.,  
Motor Third Party Office  
No.73-C, MTH Road  
I Floor, Ambattur  
Chennai - 600 053. ... Appellant/2<sup>nd</sup> Respondent

/versus/

1.Minor Prasath  
Rep. by father & next friend Mr.Vasu  
2.K.Babu  
S/o.Kanniyappan ... Respondents/Petitioner & 1<sup>st</sup> Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 01.08.2014 made in MCOP.No.152 of 2012 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge's Court), Tiruttani, Tiruvallur District.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : No appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and inspite of notice to respondents, no appearance on behalf of the respondents.

2. This appeal is preferred by the Insurance Company against the award passed by the Tribunal directing the Insurance Company to pay a sum of Rs.1,45,000/- to the claimant, who suffered fracture injury in a motor accident.

3. While on 13.03.2008, at about 1300 hrs., when a minor boy aged about 7 years, by name Prasath was returning to school along the Akkaiah Naidu Street, Tiruttani Town, after having lunch at his home, he was hit by a motor cycle bearing Registration No.TN-20-AF-6629 driven rash and negligently by one Raja. As a result of the accident, the minor boy sustained fracture on his leg and dislocation of left elbow.

4. Claim petition was filed by the injured through his father against the owner of motor cycle and its insurer, claiming a sum of Rs.5,00,000/- compensation.

5. Before the Tribunal, the owner remained absent. The Insurance Company filed its counter, contested the claim raising the ground that the rider of the two wheeler had no valid driving licence at the time of accident and therefore, the Insurance Company is not liable to pay the compensation. Further, the claim made by the injured is excessive and highly exaggerated.

6. The Tribunal had awarded a sum of Rs.1,45,000/- as compensation, directing the second respondent/Insurance Company to deposit the money within two months from the date of the order.

7. Aggrieved by the liability fixed against it, the Insurance Company has filed this appeal, chiefly contending that the driver of the motor cycle had no valid driving licence at the time of accident. Therefore, for the violation of policy condition, the insurance company must be exonerated from its liability.

8. The learned counsel for the appellant/Insurance would contend that R.W.1, who is an official of the RTO Office, Tiruttani, through Ext.R1 had categorically stated that RTO Tiruttani had not issued any driving licence to Raja, S/o. Mani, resident of Tiruttani Town, the rider who caused the accident. That apart, the Insurance Company also caused notice to Raja, the rider of the two wheeler and Babu, the owner of the two wheeler to produce the driving licence of the rider. In spite of receiving the notices, they both have not produced the driving licence. Hence, having proved that at the time of the accident, the rider of the vehicle had no valid driving licence and the owner of the vehicle had allowed a person to ride the vehicle without valid driving licence, the Insurance Company is not liable to indemnify the owner who has violated the policy condition.

9. Heard the counsel for the appellant and perused the records.

10. It is the specific case of the Insurance Company/appellant that at the time of accident, the rider of the

offending vehicle had no valid driving licence. To prove the said contention, they have summoned the official of the RTO Office, Tiruttani, to ascertain whether RTO, Tiruttani had issued any driving licence to the rider of the offending motor cycle, Raja, S/o.Mani, who is the permanent resident of Tiruttani. Ext.R1 is the letter of the RTO Office, Tiruttani indicating that no driving licence was issued in the name of M.Raja, S/o.Mani, resident of No.6, Stalin Nagar, Tiruttani. Further the legal notice [Ext.R3] dated 24.01.2014 issued by the appellant and the postal acknowledgement receipts Ext.R4 and Ext.R5 clearly establish the fact that the Insurance Company had called the rider as well as the owner of the vehicle to produce the driving licence, but, inspite of the notices having been received, they have not produced the driving licence. This leaves an inference that the rider of the two wheeler did not possess a valid driving licence at the time of accident. Being a gross violation of the policy condition, the Insurance Company is not liable to indemnify the owner, who has violated the policy condition.

11. In this case, the Insurance Company has to be exonerated from the liability, in view of the policy violation, and the owner of the vehicle alone has to be held responsible to compensate the injured.

12. It is seen from the records that the Insurance Company has already deposited the amount, pursuant to the interim order passed by this Court. Therefore, the principle of 'Pay and Recovery' is applied. The appellant/Insurance Company is permitted to recover from the owner of the offending vehicle, namely the first respondent before the Tribunal, the amount it had deposited.

13. In the light of the above fact, while exonerating the Insurance Company from liability, and it having deposited the award amount, the Insurance Company / appellant is given liberty to recover the deposited amount from the second respondent herein, who is the owner of the offending vehicle following the procedure laid in Oriental Insurance Co. Ltd., Vs. Shri Nanjappan and Others reported in [(2004) ACC 524 (SC)].

14. With this modification, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge  
Motor Accident Claims Tribunal,  
Tiruttani, Tiruvallur District.

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

C.M.A.No.1512 of 2015  
and  
M.P.No.1 of 2015

SR(CO)  
GMY(05/05/2021)



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