BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.325 of 2009

The Branch Manager
National Insurance Company Ltd.,
Anguvilas Building
North Car Street,
Nagercoil : Appellant/2nd Respondent

-vs-

1.C.Vergin @ Nelesh Vergin : 1st Respondent/Claimant

2.S.Suyambulingam : 2nd Respondent/1st Respondent

[R2 was set *ex parte*]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order made in M.C.O.P.No.726 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.2), Tirunelveli, dated 24.06.2008.

For Appellant : Mr.S.Kumar

For Respondents : Mr.T.Selvakumaran for R1
R2 - Ex parte

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award dated 24.06.2008, passed in M.C.O.P.No.726 of 2005, by the Motor Accident Claims Tribunal / Fast Track Court No.II, Tirunelveli.

2. The first respondent herein is the claimant in M.C.O.P.No.726 of 2005. According to him, on 22.02.2005, at 11.00 p.m., he travelled in an Auto bearing registration No.TN74 C7064, belonged to the second respondent and insured with the appellant - Insurance Company, from Therisanamthoppu to Kandankuzhi. It is his further case that the Auto was driven in a rash and negligent manner and hence, it fell down on the left side pit. As a result of which, the claimant sustained grievious injuries all over the body and also fracture in the right leg. Immediately, he was admitted in Thiraviam Hospital, Nagercoil, where he took treatment as inpatient from 23.02.2005 to 04.03.2005 and thereafter, he was taking treatment as outpatient in the said Hospital. For the fracture sustained by the claimant in the said accident, he undergone a surgery on 23.02.2005.

3. The claim petition was resisted by the appellant - Insurance Company mainly contending that the driver of the Auto did not have valid driving licence at the relevant time and there was violation of permit conditions also. According to the appellant, permit was issued to ply the vehicle within Nagercoil Municipal Limit, but it was taken out of the Municipal Limit and hence, there was a violation of permit condition.

4. In order to prove their case, the claimant examined two witnesses and marked eight documents and the Insurance Company examined two witnesses and marked six documents.

5. On appreciation of the evidence adduced by the parties, the Tribunal held that the appellant - Insurance Company failed to establish their defence and hence, they are liable to pay compensation to the first respondent - claimant and awarded Rs.1,40,000/- along with interest at the rate of 7.5% per annum. Aggrieved over the same, the present appeal has been filed.

6. Mr.S.Kumar, learned counsel appearing for the appellant - Insurance Company, would submit that the appellant - Insurance Company issued notice to the owner as well as driver of the Auto under Exs.R2 and R3 seeking particulars of the driving licence and other details. Though notices were received and acknowledged, they did not respond. The appellant - Insurance Company also examined the official from the Office of the Regional Transport Officer in support of their case. However, the Tribunal, without properly appreciating the evidence adduced on behalf of the appellant - Insurance Company, held that the appellant - Insurance Company has not proved that the driver of the Auto was not holding valid driving licence at the time of the accident. It is further submitted that the appellant - Insurance Company is not disputing the quantum awarded by the Tribunal and this appeal is preferred only questioning the their liability.

7. Per contra, Mr.T.Selvakumaran, learned counsel appearing for the respondent / claimant, made submissions in support of the findings of the Tribunal.

8. Heard the rival submissions and perused the materials available on record.

9. In the instant case, perusal of Paragraphs 6 and 7 of the counter filed by the appellant - Insurance Company before the Tribunal would reveal that they have taken a specific plea that the driver of the Auto was not issued with a valid driving licence at the time of the accident and for the notice sent by appellant - Insurance Company, there was no reply either from the owner or from the driver of the Auto. During trial, through R.W.1, notice dated 22.08.2005 sent to the owner of the Auto was marked as Ex.R2 and the notice dated 22.08.2005 sent to the driver of the Auto along with acknowledgment card was marked as Ex.R3. Ex.R4 is the acknowledgment card for the notice Ex.R2, which shows that the notice was served on the owner of the Auto. R.W.1 has categorically deposed before the Tribunal that there was no reply from the owner of the Auto pursuant to the notice issued to him.

10. It is also seen that despite service of notice in the claim petition, the owner remained *ex parte* and he was non-cooperative. So, in my considered opinion, the appellant - Insurance Company has taken all the steps to prove that the driver of the Auto was not having valid driving licence at the time of the accident and it is a violation of policy conditions. The first respondent / claimant, in his evidence, has proved that while he was travelling in the Auto, he sustained injuries and he was a third party. It is settled law that if any of the policy condition is violated, in respect of the third party claim, the insurer is liable to satisfy the award first and can recover the amount from the insured. It appears that the award amount is fair and reasonable.

11. In the light of the above facts, while confirming the quantum, this Court directs the appellant - Insurance Company to pay the entire award amount with accrued interest and costs to the first respondent - claimant at the first instance and then to recover the same from the second respondent / owner of the vehicle. It is represented that the entire award amount has already been deposited to the credit of the claim petition and in view of the dismissal of the appeal, the first respondent - claimant is permitted to withdraw the award amount with accrued interest and costs by filing necessary application before the Tribunal.

12. Accordingly, the civil miscellaneous appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

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To:

The Additional District Judge,
Motor Accident Claims Tribunal
(Fast Track Court No.II),
Tirunelveli.

Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1cc to Mr.T.Selvakumaran, Advocate, SR.No.26520.

C.M.A.(MD) No.325 of 2009
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