



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.29 of 2022

and

C.M.P (MD)No.234 of 2022

The Divisional Manager,
National Insurance Company Limited,
Madurai. :Appellant/Second respondent
.vs.

1.R.Rajeshwari : Respondent/Petitioner

2.Chidambaram : Respondent/Respondent No.I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.1767 of 2011, dated 23.03.2021, on the file of the Motor Accidents Claims Tribunal-cum-District and Sessions Judge, Communal Clash Cases Court, Madurai.

For Appellant :Mr.R.Rajamani

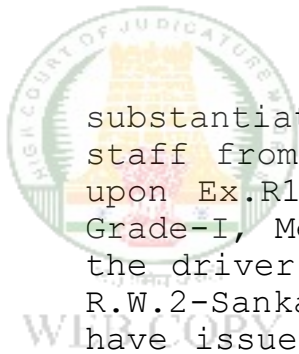
For Respondent-2 :Mr.R.Rajamohan

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree made in M.C.O.P.No.1767 of 2011, dated 23.03.2021, on the file of the Motor Accidents Claims Tribunal-cum-District and Sessions Judge, Communal Clash Cases Court, Madurai.

2.The Insurance Company is the appellant herein, challenging the award passed by the Tribunal in M.C.O.P.No.1767 of 2011, on the ground of liability. The claim Petitioner is the injured.While he was walking in the road on 21.06.2010, a two-wheeler insured with the appellant, dashed against him and caused injury and the injured has filed M.C.O.P.No.1767 of 2011 before the Tribunal.

3.Before the Tribunal, the Insurance Company has filed a counter statement alleging that on the date of accident, the rider of the two-wheeler does not possess valid driving licence to drive the two-wheeler. Hence, it is a violation of policy condition and therefore, it was contended that the Insurance Company is not liable to pay the compensation to the claimant. During trial, in order to



substantiate the above plea, they have examined R.W.1 Manimegalai, a staff from the Regional Transport Office, who could depose, based upon Ex.R1-Authorization Letter from the Motor Vehicle Inspector Grade-I, Melur, stating that no such driving licence was issued to the driver of the two-wheeler. On behalf of the Insurance Company, R.W.2-Sankara Narayan was examined and marked Ex.R3-Policy. They have issued notice to the second respondent's counsel under Ex.P4 and Ex.P5 and also issued Ex.R6 and Ex.R7 notice to produce the driving licence of the rider of the two-wheeler and the acknowledgement card. The trial Court has rejected Ex.R4, Ex.R5, Ex.R6 and Ex.R7 on the ground that some other person has signed. The fact remains that insured has served notice on the second respondent/owner of the vehicle, besides, he has remained exparte and has not taken any steps to assist the Insurance Company to file the driving licence. On the contrary, they have probalised the suggestion by marking Ex.R1 and Ex.R2. Hence I hold that the Insurance Company has satisfactorily discharged its burden of proof that on the date of accident, the rider of the two wheeler does not possess valid driving licence. According to the decision in **Beli Ram .vs. Rajinder kumar and another** reported on 2020(2) TNMAC 445, the Insurance Company could not have been fastened with the liability. Further, following the various judicial pronouncements, by following the 'pay and recovery' theory, the Insurance Company can be directed to pay the compensation to the claimant at the first instance and then to recover the same from the owner of the vehicle.

4. Accordingly, the Civil Miscellaneous Appeal is allowed in part and the appellant/Insurance Company is directed to pay the compensation, as ordered by the Tribunal, to the claimant at the first instance and then to recover the same from the owner of the vehicle, by following the due process of law. In all other aspects, the order of the Tribunal remains unaltered. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the award amount, if any already deposited, to the credit of claim petition, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the award amount so deposited, with accrued interest and costs, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

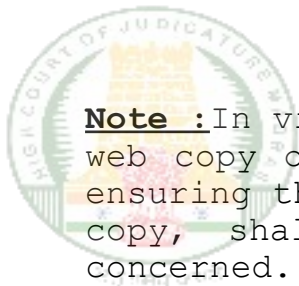
Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn



Note : 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.

WEB COPY

To

The Motor Accidents Claims Tribunal
-cum-District and Sessions Judge,
Communal Clash Cases Court,
Madurai.

Copy To:

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

C.M.A(MD)No.29 of 2022 and
C.M.P(MD)No.234 of 2022
15.03.2022

RD(30.03.2022) 3P 4C