IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3635 of 2021
and
Civil Miscellaneous Petition No.21318 of 2021

United India Insurance Co. Ltd.,
Rep. by its Branch Manager,
Having Office at No.123-A, Taj Towers,
No.2 Road, Mayiladuthurai. ... Appellant / 3rd respondent

Vs.

1. Porsezhiyan ... 1st Respondent/Petitioner

2. Prakash
3. Valarmathi ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 07.09.2019 made in M.C.O.P.No.137 of 2015, on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal.

For Appellant	:	Mr. C. Paranthaman
For R1	:	Mr. T. Ananthasekaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company seeking to set aside the Award directing them from indemnifying the owner of the vehicle in the Award passed in M.C.O.P.No.137 of 2015, dated 07.09.2019, on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that he sustained injuries while travelling in a Tata Ace goods vehicle bearing Registration No.PY 02 M 4779 on 05.02.2015 at about 06.10 p.m., on the way from Thirukadaiyur to Poriayur Main Road, while he reached near Kathanchavady Ragavendra Nagar, a Lorry bearing Registration No.TN 51 K 2716 driven by its driver came in the opposite direction in rash and negligent manner and dashed against the goods vehicle on the right side resulting which, the goods vehicle hit on the tree which was standing on the road and stopped, which resulted in causing severe injuries to him. Immediately, he was admitted

into various hospitals for treatment and after discharged from the hospital he has come forward with the claim petition claiming compensation of Rs.20,00,000/-. In this regard, a criminal case was also registered against the driver of the lorry in Crime No.108 of 2015 under Sections 279 and 337 IPC on the file of the Poriayur Police Station.

4. The first respondent-driver of the vehicle and the second respondent is the owner of the offending vehicle have filed counter and denied the manner in which the accident had occurred and also contended that the accident had occurred only due to the negligent act of the driver of the goods vehicle i.e., the petitioner, and prays to dismiss the claim.

5. The third respondent- Insurance Company has filed counter and contended that the petitioner had travelled as a gratituous passenger in the goods vehicle, hence the petitioner is not entitled to get any compensation from them. The negligent act of the driver of the goods vehicle was also disputed and also contended that the petitioner has to prove his age, avocation, and income, and prays to dismiss the claim.

6. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded compensation of Rs.15,13,750/- to the claimant, and directed the Insurance Company to indemnify the owner of Lorry i.e., Respondent No.2.

7. Aggrieved over the Award passed by the Tribunal, this appeal has been filed by the Insurance Company absolving them from indemnifying the owner of the vehicle on the ground that the driver of the offending vehicle was not having valid driving licence and there is a violation of policy condition.

8. The learned counsel for the Insurance Company has submitted that this accident led to filing of three claim petitions and all the claim petitions were tried together before the Motor Accident Claims Tribunal, Sub Judge, Karaikal and separately, in other two cases i.e., M.C.O.P.Nos.184/2015 137/2015, the Tribunal after holding that the driver of the offending vehicle was not having valid driving licence, directed the Insurance Company to pay the compensation by adopting the Principle of Pay and Recover. In this case, the Tribunal has not adopted the same and

directed the Insurance Company to indemnify the owner of the vehicle and the same is not proper and prays to set aside the above finding.

9. Per Contra, the learned counsel for the claimant has also accepted the submission of the Insurance Company and submitted that in other two cases, the Principle of Pay and Recover was followed by the Tribunal and the same may also be followed in this case also.

10. I have considered the rival submissions made on both sides and also perused the entire records.

11. On perusal of the Award of the Tribunal, the Tribunal has specifically dealt with the non-possession of driving licence by the driver of the first respondent who driven the offending lorry. The Tribunal based on the Accident Inspection Report has arrived its conclusion that inspite of notice given to the owner of the vehicle, the owner has not produced the driving licence and concluded that the first respondent was not having valid driving licence at the time of accident. Having observed so, the Tribunal ought to have adopted the Principle of Pay and Recover since the claimant

herein is the third party and the Insurance Company is not liable to indemnify the owner of the vehicle for violation of policy condition.

12. Considering the fact that in other connected cases, the Tribunal has passed an award adopting the Principle of Pay and Recover and since in this case also the Tribunal after holding that the driver of the offending vehicle was not having valid driving licence, ought to have adopted the Principle of Pay and Recover. Accordingly, this Court is inclined to modify the Award of the Tribunal that the Insurance Company is liable to pay the compensation to the claimant and they are entitled to recover the claim amount from the second respondent, who is the owner of the vehicle.

13. In the result, this Civil Miscellaneous Appeal is allowed. The third respondent/ Insurance Company is directed to deposit the award of the Tribunal along with interest and costs, less the amount already deposited, if any, excluding the default period if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.137 of 2015, on the file of the Motor Accidents Claims

Tribunal, District Court, Karaikal and thereafter recover the same from the second respondent, being the owner of the vehicle as per the Principle of 'Pay and Recover'. On such deposit, the claimant is permitted to withdraw the award amount, along with proportionate interest and costs, less the amount, if any, already withdrawn. In other aspects, the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

14.12.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The District Judge,
   Motor Accidents Claims Tribunal,
   Karaikal.

2. The Section Officer,
   V.R.Section,
   High Court,
   Chennai.

<u>K.RAJASEKAR,J.</u>

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