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C.M.A.No.2574 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2574 of 2021

Madhaiyan

... Appellant / Petitioner

Vs.

1. Murugan

[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

2. IFFCO Tokyo General India Insurance Company Ltd.,
GSN Arcade, 2nd Floor,
Near Vemala Kalyana Mandapam,
Bye Pass Road,
Housur – 34.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 09.10.2020 made in M.C.O.P.No.291 of 2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri

For Appellant	:	Mr. Amar Dineshbhai Pandiya
For R1	:	No appearance
For R2	:	Mr. J. Michael Visuvasam



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking to set aside the Award of absolving Insurance Company from indemnifying the owner of the vehicle in the Award passed in M.C.O.P.No.291 of 2019, dated 09.10.2020, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.

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 as a pillion rider in a two-wheeler bearing Registration No.TN 28 M 7292 driven by its owner on 03.05.2018 at about 11.00 a.m., on the way from Indur to Papparapatti Road, near O.G.Halli Muniappan Temple, due to negligent riding of two-wheeler by the Respondent No.1. Subsequently, he come forward with the claim petition under Section 166 of the Motor Vehicles Act for claiming compensation of Rs.10,00,000/-.

4. The first respondent – owner-cum-driver of the offending two-



wheeler has not contested the claim and was remained ex-parte. The second respondent - insurer has filed counter and contended that there is no driving licence for the driver of the two-wheeler belongs to the first respondent. The negligent act of the rider of offending two-wheeler was also disputed.

5. Before the Tribunal, the on the side of the claimant P.W.1 was examined and Exs.P1 to P7 were marked. On the side of the second respondent no oral and documentary evidence marked. The Disability Certificate of the claimant was also marked as Ex.C1.

6. Based on the evidence placed on record, the Tribunal in Point Nos.1 and 2 has held that the first respondent has negligently rode the two-wheeler and caused the accident and that the first respondent was not having valid driving licence at the time of accident hence the Insurance Company is not liable to indemnify the first respondent. In Point No.3, the Tribunal has quantified the compensation and directed the first respondent to pay the compensation of Rs.1,95,194/- to the claimant.

7. Aggrieved over the award of the Tribunal for absolving the Insurance Company from liability, this appeal has been filed by the



claimant.

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8. It is submitted by the learned counsel for the claimant that the Tribunal has not considered the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaransingh and others [2004 (3) SCC 297]*** case, which has been subsequently followed in several judgments by this Court and has held that since the injured in this case is third party, the Principle of Pay and Recover shall follow.

9. The learned counsel for the Insurance Company has submitted that the Tribunal has passed the award based on the evidence placed on record and they have also examined the officials of RTO to prove the non-possession of driving licence, hence prays to confirm the award.

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

11. As per the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaransingh and others [2004 (3) SCC 297]*** and reiterated by this Court in ***United India Insurance company Vs. Nagammal and others [2009 (1) CTC 1 (Full Bench)]***, the Principle of 'Pay



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and Recover' is applicable to this case since the injured is a third party to policy but the Tribunal has not considered the same. Accordingly, this Civil Miscellaneous Appeal is allowed with a direction to the Insurance Company to pay the compensation quantified by the Tribunal and recover the same from the first respondent by following the Principle of 'Pay and Recover'.

12. In the result, this Civil Miscellaneous Appeal is allowed. The second respondent/ Insurance Company is directed to deposit the award of the Tribunal along with interest and costs, less the amount already deposited, 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.291 of 2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri and thereafter recover the same from the first 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 stand confirmed. There shall be no order as to costs in the present appeal.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

K.RAJASEKAR,J.

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To:

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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