IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.06..2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No. 2300 of 2014
and MP.No.1 of 2014

Iffco Tokio General Insurance Co.Ltd.,
No.145/131, Ground Floor,
Nelson Manickam Road,
Chennai – 600 029. ... Appellant/2nd respondent

..Vs..

1.C.Mohan
2.C.Selvaraj ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 19.12.2011 made in M.C.O.P.No.127 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Cheyyar.

For Appellant : Mr. Michael Visuvasam
For Respondents : Mr.S.Makesh for R1
(Vakalat not filed)
R2 - unclaimed

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 19.12.2011 made in M.C.O.P.No.127 of 2007 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Cheyyar.

2. The case of the appellant is that on 17.01.2007 at 6.30 p.m., while the claimant was proceeding in his two wheeler from Perumanthangal Village to Perungattur Village, a Bajaj two wheeler bearing Regn.No.TN-20-AB-4657 belonging to the second respondent and insured with the appellant, driven by its rider in a rash and negligent manner, which came in the opposite direction, hit against the claimant's vehicle. Due to the said impact, the injured claimant sustained grievous injuries. Claiming a compensation of Rs.5,00,000/-, the claimant filed a petition in MCOP.No.127 of 2007 before Motor Accidents Claims Tribunal, (Sub-Judge, Cheyyar).

3. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the rider of the Bajaj two wheeler bearing Regn.No.TN-20-AB-4657 and at the time of accident, the said vehicle is covered by an Insurance Policy which is not in dispute. Accordingly, the appellant/Insurance Company and the second respondent are jointly and severally made liable to pay the compensation of

Rs.1,69,200/- to the claimant.

4. The learned counsel for the appellant has submitted that the Judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He further submitted that it grossly erred in holding that the appellant is liable where it is clearly proved that the owner cum driver of the motor cycle had no driving license and was prosecuted under Section 3 of the MV Act for not possessing driving license. It failed to appreciate that driving the motorcycle without possessing driving license is against the provisions of the M.V. Act, 1988. It failed to observe that the insurer is not liable to indemnify the loss sustained by the insured cum owner of the vehicle since he has willfully committed a breach of policy condition by riding the insured vehicle without any license on the date of accident. It has overlooked the various decisions of the Hon'ble Supreme Court of India, exonerating the Insurance Company of its liability in cases wherein there was no driving license at all. It has grossly erred by fixing liability on the Insurance Company merely because the vehicle is insured with them, in the absence of compliance by the insured/owner as required

under the provisions of M.V Act and the conditions of the policy of insurance, without even granting right of recovery. The Tribunal in fastening liability on the insurer is unsustainable and liable to be set aside in the interest of justice. He further submitted that the appellant has already deposited the compensation amount as ordered by the Tribunal. Hence, he prays to allow this appeal by setting aside the order of the Tribunal.

5. The learned counsel appearing on behalf of the first respondent has disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads. He further submitted that the liability fixed on the part of the Insurance Company and the owner of the vehicle jointly and severally is correct. Therefore, it does not call for any interference. Hence the appeal is liable to be dismissed.

6. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the entire materials available on record.

7. Before the Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and thirteen documents were marked as Ex.P1 to Ex.P13. On the side of the respondents, one witnesses was examined as RW1 and one document was marked as Ex.R1.

8. A perusal of the award would reveal that Ex.P1 - copy of the First Information Report was registered against the two wheeler bearing Regn.No.TN-20-AB-4657 stating that the rider of the said vehicle was responsible for the accident, which corroborated with the version of claimant. But, at the time of the accident, the rider of the Bajaj two wheeler bearing Regn.No.TN-20-AB-4657 did not possess the valid and effective driving license to drive the said vehicle. However, there was Insurance policy coverage and R.C.Book and learners license for the said vehicle as seen from the records and the R.C.Book, Insurance Policy and learner's license were marked as Ex.PW3, PW4 and PW5 respectively before the Tribunal.

9. It is now settled law that whenever the driver of the insured vehicle was not possessing a driving license at the time of the accident, the

Insurance Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). However, as seen from the impugned award, without considering the aforesaid settled law, the Tribunal has fixed the liability on the appellant and the second respondent jointly and severally who are the insurer and the owner of the vehicle respectively and failed to award pay and recovery rights to the appellant/Insurance Company**.** Therefore, this Court is of the opinion that it would be appropriate to fix the liability on the appellant/Insurance Company to pay the compensation to the claimant and thereafter, recover the same from the owner of the vehicle. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

10. In the result,

(i) This Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

(ii) The liability fixed on the appellant/Insurance Company and the first respondent by the Tribunal under the impugned award is set aside.

(iii) Since the appellant/Insurance Company has already deposited the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.No.127 of 2007, it is now permitted to withdraw the same.

(iv) The owner of the vehicle is directed to deposit the entire award amount as ordered by the Tribunal, to the credit of MCOP.No.127 of 2007, within a period of six weeks from the date of receipt of a copy of this Judgment, in accordance with law.

(v) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Index:Yes/No **07.06.2023**
Internet:Yes/No
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A.A.NAKKIRAN, J.
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To

1. The Motor Accidents Claims Tribunal,
   Sub Judge, Cheyyar.

2. The Section Officer
   V.R.Section,
   High Court of Madras.

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and
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