



C.M.A.No.3643 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :14.12.2022

Judgment Pronounced on :20.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3643 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
National Insurance Company Limited,
Pondicherry.

... Appellant

vs.

1.Arulselvan
2.Rasu

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.271 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Chidambaram dated 27.09.2012.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.A.Murugan

For R2 : Mr.C.K.Chandrasekar



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the award and decree made in M.A.C.T.O.P.No.271 of 2011 dated 27.09.2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Chidambaram.

2. The Insurance Company is the appellant herein.

3. The first respondent herein who had sustained injuries in the road transport accident that had taken place on 02.01.2011, filed the above M.C.O.P.No.271 of 2011 claiming compensation for the injuries sustained in the accident.

4. Before the Tribunal, the appellant (second respondent before the Tribunal) filed a counter statement and inter-alia contended that at the time of the accident, the two wheeler was driven by Sivakumar who was not having any valid driving license and there is a violation of policy conditions and therefore it is clear that the Insurance Company has to be exonerated from the liability.

5. During the trial, the injured person was examined as P.W.1 and the Doctor was examined as P.W.2; Exhibits P1 to P11 were marked and X-Ray was marked as C1; staff from the Insurance Company was examined as R.W.1 and Exs.R1 to R6 were marked. Exhibit P10 is the



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driving license of Raju who is the owner of the vehicle.

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6.The trial Court has held that since Raju was having driving license, the Insurance Company is also liable to pay the compensation and ordered the award of compensation accordingly.

7. Aggrieved by such finding, the Insurance Company has preferred this appeal.

8. The learned counsel for the appellant/Insurance Company contended that they are challenging the award on the ground of liability. At the time of the accident, the said Sivakumar was said to have been riding the two wheeler insured with the appellant/Insurance Company and he did not have valid driving license at the time of the accident and hence it amounts to violation of policy conditions and hence pay and recovery ought not to have been ordered.

9. Heard the learned counsel for the respondents.

10. Ex.P8 Registration Certificate of the two wheeler; Ex.P9 is the insurance copy; Ex.P1 is a F.I.R and Ex.P2 is the Motor Vehicle Report. In both Exhibits P1 and P2, the rider of the vehicle is mentioned as Sivakumar. P.W.1 in Cross examination has admitted that the said Sivakumar is not having any valid driving license on the date of the accident. The driving license of the owner of the vehicle is wrongly construed as a driving license of the rider by the trial Court and such an



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approach is erroneous and hence the same is liable to be vacated.

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11. It appears that the Insurance Company has sent a legal notice under Ex.R2 and it returned 'unserved', as could be seen from Exhibits R3 and R4 and hence on the date of the accident, the rider of the two wheeler Sivakumar is not having valid driving license as admitted by P.W.1 and hence the same is violation of the policy condition (Ex.R6) and therefore, the appellant/Insurance Company is not liable to pay the compensation. However, based upon the judicial decisions, I am inclined to order the pay and recovery option.

12. The finding of the trial Court and liability fixed by the appellant/Insurance Company is hereby set aside and modified as that of pay and recover from the owner of the vehicle/2nd respondent.

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, connected M.P is closed.

20.01.2023

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



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To

1. The Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Chidambaram
2. The Section Officer,
V.R.Section, High Court of Madras, Chennai.



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RMT.TEEKAA RAMAN, J.,

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