IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 06.02.2023]

[PRONOUNCED ON :]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.193 of 2023

United India Insurance
Company Ltd.
No.2, Dr.Sankaran Road,
Namakkal Town, Namakkal Taluk,
Namakkal District. ... Appellant

.. Vs ..

1. A. Periannan
2. Managing Partner,
M/s Sree Badrinath
D.No.8/93, Puliparambil House,
Encondiyur Post,
Tiruchur District, Kerala State. ... Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act,1988 against the Award dated 07.03.2022 made in M.C.O.P.No.757 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Namakkal.

For Appellant : Mrs.R.Sree Vidhya

For Respondent1 : Mr.M.Lokesh

JUDGMENT

By consent of parties, the main case is taken up for final disposal.

2. The Insurance Company is the appellant herein challenging the Award dated 07.03.2022 made in M.C.O.P.No.757 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Namakkal.

3. The first respondent herein filed the Claim Petition in M.C.O.P.No.757 of 2016 before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by him in the road traffic accident happened on 11.08.2016.

3. The Insurance Company filed a counter statement alleging that the second respondent vehicle viz, Lorry bearing Registration No. KL 46 K 1615 was insured with the Insurance Company, but however, it was

carrying hazardous goods, which is in violation of Policy conditions.

4. Before the tribunal, the first respondent was examined as P.W.1 and the Doctor was examined as P.W.2. and Ex.P1 to Ex.P10 were marked. On the side of Insurance Company, one Rajamanickem was examined as R.W.1. and Ex.R1 to Ex.R4 were marked.

5. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the Claim petitioner/first respondent herein has suffered 10 % of permanent disability and awarded loss of income for three months. Accordingly, the Tribunal has awarded a total compensation of Rs.3,53,611/- to the claim petitioner. Further, the Claim Tribunal by observing that the claim petitioner has also contributed to the accident, by not holding a valid license, fixed 10 % contributory negligence on the claim petitioner. Accordingly, the Insurance Company-Appellant herein was directed to deposit 90% of the award amount along with interest at the rate of 7.5% per annum. Aggrieved against the said direction, the Insurance Company has preferred this Appeal.

6. Heard the learned counsel for the Insurance Company and the learned counsel for the first respondent/claimant and perused the materials available on record.

7. It is a specific case of the appellant-Insurance Company that at the time of accident, the driver of the lorry does not possess necessary badge endorsement, to drive the vehicle with hazardous goods.

8. In this regard, my attention was drawn to the plea raised in the counter as well as the evidence of R.W.2, who would clearly dispose that at the time of accident, the driver of the tanker lorry bearing Registration No. KL 46 K 1615 was not having necessary badge endorsement to drive the lorry filled with hazardous goods. In this connection, they have marked Ex.R2 and Ex. R3, letter from Sub Regional Transport Office, Chalakud and further notice calling upon the driver to produce his driving license, were also marked as Ex.R4, Ex.R5 and Ex.R6.

9. In view of the specific plea raised in the counter statement and

documentary evidence namely Ex.R1 to Ex.R6, this Court find that on the date of the accident, the driver of the insured vehicle does not possess necessary badge endorsement and driving license to drive the vehicle with hazardous goods and therefore, the same amounts to violation of policy condition.

10. Therefore, the Insurance company is not liable to pay compensation, however by following the decision of our Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Swaran Singh and others*** reported in ***2004 (1) TNMAC 104 (SC)***, the Insurance Company is directed to deposit the award amount and to recover the same from the owner of the vehicle.

11. Accordingly, the award passed by the Tribunal is modified, as follows:

(i) this Civil Miscellaneous Appeal stands partly allowed, to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the award amount before the Tribunal, with interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the owner of the vehicle.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

02.**2023**

Index : Yes / No
Internet : Yes
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To
1. The Motor Accident Claims Tribunal, Namakkal.

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

RMT.TEEKAA RAMAN, J.

Nti

Pre-Delivery Judgment

in C.M.A.No.193 of 2023

.02.2023