IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2971 of 2023

Raja ... Appellant

Vs.

1.Kumaresan

2.The Branch Manager,
Oriental Insurance Company Limited,
Cochin, Kerala.

3.Jayaprakash ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Acct, 1988, against the fair and final order dated 30.08.2011 passed by the learned Motor Accident Claims Tribunal cum Subordinate Court, Attur in MCOP.No.6 of 2008.

For Appellant : Mr.L.Mouli

For Respondents : Mr.M.J.Vijayaraghavan for R2

JUDGMENT

The claimant who had suffered injuries in an accident that took place on 15.08.2007, while he was travelling as a pillion rider in a two wheeler, has approached this Court with this appeal against another offending goods carrier belonging to the first respondent and insured with the second respondent. Seeking compensation, the claimant approached the Motor Accident Claims Tribunal cum Subordinate Court, Attur, with M.C.O.P.No.6 of 2008. The Tribunal had awarded a total compensation of Rs.1,86,100/- to be paid by the first respondent herein with interest at 7.5% per annum. Challenging the same, the claimant / appellant has preferred this appeal.

2.Since the claimant has preferred this appeal questioning the liability fixed upon the owner of the offending vehicle, this Court considers that notice to the respondents 1 and 3 is not necessary.

3.Mr.L.Mouli, the learned counsel for the appellant submitted that the Tribunal had awarded a compensation of Rs.1,86,100/- and the same is payable by the owner of the offending vehicle, the first respondent therein who remained ex parte before the Tribunal. However, the driver of the offending vehicle did not possess a badge, which is a clear violation of policy condition. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company vs. Swaran Singh and others***, [2004 (1) TN MAC 104 (SC)], wherein, it has been held that in case of a policy violation, the insurer is liable to compensate the claim and thereafter recover the same from the insured, and the present case in hand being similar to that of the above decision relied upon, he prays for appropriate direction of this Court, directing the insurance company to pay the compensation fixed by the Tribunal.

4.On the above said contentions, heard the learned counsel appearing for the second respondent / the insurance company and perused the materials placed on record.

5.Though very many grounds have been raised by the learned counsel on either side at the time of arguments, as the learned counsel for the appellant submitted that, it would suffice, if this Court issues direction to the insurance company to pay the appellant the compensation arrived at by the Tribunal instead of the first respondent / owner of the offending vehicle, this Court, without going into the merit of the case, directs the second respondent / the insurance company to pay the total compensation awarded by the Tribunal with interest at 7.5% per annum from the date of claim petition till the date of payment, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Further, this Court grants liberty to the second respondent / the insurance company to initiate appropriate recovery proceedings as against the first respondent / owner of the vehicle, after payment of the compensation to the appellant.

21.12.2023

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

To

The Motor Accident Claims Tribunal cum Subordinate Court,
Attur

N.SESHASAYEE, J.

Anu

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