IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.464 of 2023

M/s.The United India Insurance Company Limited,
Shanmugha Complex,
1/15, 24-A, First Floor
New Edappadi Road,
Sankari, Salem District. ... Appellant

vs.

1.Gunasekaran
2.M.Murugesan
(2nd respondent set-exparte in
Lower Court) ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2012 made in M.C.O.P.No.307 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Rasipuram.

For Appellant : Mrs.R.Sree Vidhya

For R1 : Mr.Ma.P.Thangavel

For R2 :Exparte

JUDGMENT

The Insurance Company is the appellant herein.

2. Challenging the award granted in M.C.O.P.No.307 of 2009, the Insurance Company has preferred this appeal on the ground that, on the date of the accident, the driver of the offending vehicle did not possess valid driving license. He further contended that, as per Ex.P5, he was having only the L.M.V license and does not have any valid license to drive goods carrying vehicle.

3. Heard the learned counsel appearing for the first respondent.

4. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

5. The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken

place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

6. The short point arises for consideration is as to whether on the date of the accident, the driver of the offending vehicle has valid badge to drive the goods carrying vehicle or not?

7. After going through Ex.P11 driving license of Mr.Murugesan the driver of the insured vehicle, the tribunal has rightly observed that he was permitted to drive unloaded weight capacity upto 1550. At the time of the accident, there is absolutely no evidence as to whether the vehicle involved in the accident is loaded or unloaded.

8. After perusal of the documentary evidence adduced by the petitioner, it is seen from Ex.P4 motor vehicle inspector report as well as Ex.P11 copy of the driving license of Murugesan that he was having valid driving license to drive L.M.V up to an unloaded weight of 1500.

9. As stated supra, there is absolutely no evidence to show on the date of the accident whether the vehicle carried luggage or not.

10. Though the point has been raised before the Tribunal in the counter affidavit that, the driver of the vehicle did not possess valid necessary badge on the date of the accident, the Insurance Company tried to repudiate the policy.

11. Admittedly, the copy of the policy was not marked before the Tribunal. No one in connection with R.T.O office with regard to driving license were examined by the Insurance Company. The second respondent/insurance company before the tribunal has examined R.W.1, the Assistant Manager of the insurance company who deposed in his oral evidence on the fact that the driver of the offending vehicle did not possess valid badge endorsement. The fact that except the mere oral deposition, there is no positive evidence to substantiate the plea of non-examination of any person from the road transport authority assumes significance.

12. Furthermore, it is also noticed that, once the insurance company takes the plea of non possession of driving license, the burden of proof is upon the insurance company to prove that the second respondent did not possess valid badge endorsement. Unfortunately there is no such positive evidence.

13. Therefore, in the absence of any positive evidence, the trial Court has rightly held that Ex.P 11, Driving license is sufficient enough to make the insurance company jointly and severally liable with the owner of the vehicle and such finding does not suffer from any illegality or irregularity warranting interference.

14. In view of the matter, this Civil Miscellaneous Appeal is dismissed. The finding rendered by the Tribunal that both the owner of the vehicle as well as the Insurance Company are jointly and severally liable to pay the compensation cannot be interfered with.

27.02.2023

nvi

Index : Yes / No

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

To

1. The Motor Accidents Claims Tribunal (Subordinate Judge) at Rasipuram)

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

RMT.TEEKAA RAMAN, J.,

nvi

**Judgment in
C.M.A.No.464 of 2023**

27.02.2023