IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3546 of 2019
and
C.M.P.No.20673 of 2019

M/s.United India Insurance Company Limited
No.74-A, Salai Road,
Thillai Nagar, Trichy-18. ... Appellant

..Vs..

John Peter ...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.02.2017 made in MCOP.No.803 of 2015, on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate Court, Perambalur.

For Appellant : Mr.M.B.Gopalan Associates
For Mr.E.Rajadurai

For Respondent : Mr.T.Gobinath

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the award dated 27.02.2017 passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur, in MCOP.No. 803 of 2015.

2. The Appellant / Insurance Company has challenged the Award on the following grounds:

a) The Tribunal has failed to appreciate that even under Section 163-A of M.V. Act, the said application was not maintainable.

b) The Tribunal has failed to appreciate that there is no statutory coverage for the owner himself under M.V.Act.

c) The Tribunal ought to have held that the claim could be that the injury involved in the present case is not one for which benefit is payable under the Policy and

d) The Tribunal failed to appreciate that limited benefit was contractually covered for specified injuries but the respondent having suffered no injury as contemplated by the policy the was unsustainable.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	*Award Amount (Rs.)*
Loss of income	8,000/-
Pain and suffering	30,000/-
Extra Nourishment, transport and attender charges	5,000/-
Disability (3000 x37)	1,11,000/-
Medical Expenses	2,000/-
Total	**1,56,000/-**

4. Before the Tribunal, on the side of the respondent/claimant, two witnesses were examined as PW1 and PW2 and seven documents were marked as Ex.P1 to Ex.P7. On the side of the Appellant, two witnesses were examined and three documents were marked as Ex.R1 to Ex.R3.

5. The learned counsel for the Appellant would submit that it is settled law that when there is no insurance coverage for the vehicle on the date of accident, the Insurance Company cannot be made liable to pay the compensation. He submitted that the accident happened on 06.01.2015, but theres is no valid driving license for the driver of the vehicle at the time of accident. He had possess only LLR at the time of accident. Therefore, he

would contend that the Tribunal has erroneously mulcted the liability on the appellant under the impugned Award and has also erroneously fastened 95% of liability on the appellant/insurance company and 5% liability on the respondent/claimant.

6. In support of his submissions, the learned counsel for the Appellant/insurance company would rely upon the following authorities:

(a) A decision of this Court in the case of ***The Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu*** reported in ***MANU/TN/4713/2020 in CMA.No.2434 of 2019 dated 02.09.2020*** and

(b) A decision of a learned Single Judge of this Court dated 04.03.2020 passed in ***C.M.A.No.448 of 2016 in Royal Sundaran Allianz Insurance Co., Ltd., Buz Plaza, 3rd floor, No.5G, Lawsons Road, Cantonement, Trichy.***

7. Relying upon the aforesaid decisions, the learned counsel for the Appellant would submit that the Tribunal ought to have exonerated the Appellant / Insurance Company from any liability since there was no valid

driving license on the date of the accident i.e., on 06.01.2015.

8. Heard the learned counsel for the appellant/Insurance Company and as well as the learned counsel for the respondent and also perused the materials on record.

9. It is relevant to refer the judgment rendered by this Court passed in ***C.M.A.No.448 of 2016*** which reads as follows:

> *"7. The learned Counsel appearing on behalf of the Appellant mainly contended that the Appellant is not liable to pay compensation on the ground that there is no Insurance Coverage as far as the case of the Respondent-Claimant is concerned. Admittedly, the Policy is Personal Accident Coverage Policy for Owner/Driver and the said policy would not cover such nature of injuries and accordingly, the learned Counsel for the appellant solicited the attention of this Court with reference to the Policy, which was marked as a document before the Tribunal."*

10. Perusal of the Policy reveals that Section IV – Personal Accident

Cover for Owner-Driver, which reads as under:

"SECTION IV – PERSONAL ACCIDENT COVER FOR OWNER-DRIVER:

Subject otherwise to the Terms, Exceptions, Conditions and Limitations of this Policy, the Company undertakes to pay Compensation as per the following scale for bodily /death sustained by the Owner-Driver of the vehicle in direct connection with the vehicle insured or whilst mounting into/dismounting from or travelling in the insured vehicle as a Co-Driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Details of injury	***Scale of Compensation***
(i) Death	*100% of CSI*
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100% of CSI*
(iii) Loss of one limb or sight of one eye	*50% of CSI*
(iv) Permanent Total Disablement from injuries other than named above	*100% of CSI*

11. In the case on hand, admittedly the claimant in his claim petition has disclosed only the name of the Insurance Company but have not disclosed particulars of driving license. The claimant has also not adduced any evidence before the Tribunal with regard to the steps he had taken to obtain the driving license for the vehicle which was involved in the accident. It has also been the consistent stand of the Appellant / Insurance Company before the Tribunal as seen from their counter statement as well as from their oral and documentary evidence that the subject vehicle did not have statutory coverage to the driver of the vehicle on the date of the accident i.e., on 06.01.2015. There is no contradiction whatsoever. For the foregoing reasons and in view of that when there is no valid driving license on the date of the accident, the Appellant cannot be made liable to compensate the claim.

12. This Court has also perused and examined the impugned Award as well as the evidence placed by the respective parties before the Tribunal. The Appellant / Insurance Company has conclusively established before the Tribunal that on the date of the accident, i.e., on 06.01.2015, there was no

valid driving license for the subject vehicle which was involved in the accident. The Tribunal under the impugned Award by total non-application of mind and without assigning proper reason has mulcted the 95% liability on the Appellant / Insurance Company who are not at all liable to compensate the claim, since there was no valid driving license on the date of the accident. He had driven the vehicle without valid driving license but he possessed only LLR for driving the vehicle and thereby he was liable for causing the accident.

Conclusion:

13. For the foregoing reasons, the impugned Award dated 27.02.2017 passed in MCOP.No.803 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, against the Appellant is hereby set aside and this appeal is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

19.04.2023

Index:Yes/No
Speaking/Non-speaking order

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To

1. The Chief Judicial Magistrate Court,
   Perambalur.

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

A.A.NAKKIRAN, J.

gv

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