

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1425 of 2012

M/s.P.R.Plastics ... Appellant/1st Respondent

Vs.

1.M.Shankar Lingam ... Respondent/Petitioner

2.United India Insurance Company Ltd.,
3 E, Balavinayagar Kovil Street,
Tuticorin. ... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 08.06.2007 passed in M.C.O.P.No.46 of 2006 on the file of the Chief Judicial Magistrate (Motor Accident Claims Tribunal), Tuticorin.

For Appellant : Mr.P.Balamurugan

For R1 : No Appearance

For R2 : Mr.G.Prabhu Rajadurai

JUDGEMENT

The present appeal has been filed by the owner of the vehicle challenging an award of pay and recovery.

2. According to the claimant, he is one of the employees of the 1st respondent company and he was travelling in a vehicle belonging to the 1st respondent company, which was insured with the 2nd respondent company. The driver of the said Mahindra van had driven the said vehicle in a rash and negligent manner and the vehicle got capsized. The claimant got injured in the said accident. Therefore, he filed a claim petition seeking a compensation of Rs.5,00,000/-.

3. The 1st respondent, namely the owner of the vehicle had remained ex parte and the 2nd respondent alone filed a counter contending that the claimant has to prove that there was a valid insurance for the vehicle. They have further contended that the driver of the vehicle was not possessing a valid driving license at the time of accident. The insurance company further disputed the quantum of compensation.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that there was a negligence on the part of the driver of the Mahindra van, which was responsible for the said accident. The tribunal further arrived at a finding that the driver of the said Mahindra Van was not having a valid and effective driving license at the time of accident. Thereafter, the tribunal has proceeded to fix the award at Rs.3,55,760/- and permitted the insurance company to satisfy the award and thereafter, recover the same from the owner of the vehicle. The said award is challenged by the owner of the vehicle.

5. According to the learned counsel appearing for the appellant/owner of the vehicle, the driver of the Mahindra Van was possessing a valid and effective driving license on the date of the accident. He further contended that there was an insurance policy in favour of the vehicle which met with the accident. Therefore, the tribunal was in error in awarding pay and recovery.

6. Per contra, the learned counsel appearing for the insurance company had contended that the company has taken a specific stand in the counter that the driver of the Mahindra Van was not possessing a

valid and effective driving license at the time of accident. However, the owner had not produced the driving license for the relevant period. Therefore, no fault can be found with the award of the tribunal in ordering pay and recovery.

7. I have carefully considered the submissions made on either side.

8. The appeal has been filed by the owner of the vehicle challenging an award of pay and recovery. The award of pay and recovery has been ordered only on the ground that the driver of the vehicle which met with the accident did not possess a valid and effective driving license at the time of accident. Even though opportunity was granted to the owner of the vehicle to file the said document, the owner of the vehicle has not chosen to file any driving license of the driver either before the tribunal or before this Court. Therefore, this Court is of the opinion that the tribunal cannot be found fault with, in ordering pay and recovery in view of the violation of policy conditions. In view of the fact that the insurance company has not filed any appeal challenging the order of pay and recovery, the other issues relating to the existence of policy is not gone into. The appeal lacks merits.

9. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

23.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

gbg

To

- 1.The Chief Judicial Magistrate
(Motor Accident Claims Tribunal),
Tuticorin.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.1425 of 2012

R.VIJAYAKUMAR,J.

gbg

Order made in
C.M.A(MD)No.1425 of 2012

23.03.2023