



C.M.A(MD)No.962 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 02.08.2023

Pronounced On : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.962 of 2011

C.Murugan

: Appellant / Claimant

Vs.

1.N.Gunasekar

2.The New India Assurance Company Limited,
P.P.K.Complex, T.S.No.3548/2 & 3549/1,2,
South Raja Street,
Pudukottai – 622 001.

: Respondents /Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and award, dated 28.12.2007 in M.C.O.P.No.578 of 2004 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court/Special Court, Pudukottai in so far as awarding lesser compensation and enhance the compensation.



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For Appellant : Mr.S.Veerapandian,
for Mr.Sri Balaji.

For Respondents : Mr.J.s.Murali, for R2.

: No Appearance for R1.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.578 of 2004, date 28.12.2007 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court/Special Court, Pudukottai.

2. The appellant/claimant, who was awarded with compensation of Rs.1,83,233/- with interest at 7.5% per annum for the disability suffered, consequent to an accident occurred on 28.09.2003, challenged the liability mulcted on the first respondent/owner of the vehicle without invoking the doctrine of pay and recovery and also the quantum of compensation awarded at by the Tribunal.

3. Though the claimant challenged the quantum of compensation awarded at by the Tribunal, the learned counsel for the appellant would



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submit that they are only challenging the award of the Tribunal in not applying the doctrine of pay and recovery.

4. The learned counsel for the appellant would submit that the Tribunal has held that the second respondent/insurer is not liable to pay compensation, since the driver of the vehicle is not holding valid license to drive the vehicle at the time of accident. He would further submit that the Tribunal ought to have directed the Insurance Company to pay compensation to the appellant and recover the same from the first respondent.

5. The only point that arises for consideration is as to whether the Tribunal erred in not invoking the doctrine of pay and recovery to the case on hand, despite showing that there was only a violation of policy condition, as the driver of the offending vehicle was not possessing valid driving license at the time of accident.?

6. The Tribunal, considering the evidence available on record and also taking note of the fact that the first respondent's driver had pleaded guilty and on that basis, conviction was made, has come to a decision



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that the accident was occurred only due to the rash and negligent driving of the first respondent's driver.

7. The respondent/insurer in order to prove their defence that the first respondent's driver was not having valid driving license, has examined R.W.1 to R.W.3 and produced the driving license under Ex.X.1.

8. Considering the evidence of R.W.1 to R.W.3 and Ex.X.1, the Tribunal has rightly come to a decision that the insurer has proved that the first respondent's driver was not holding valid driving license at the time of accident. The Tribunal, by considering the decisions relied on by both the sides, has decided that the doctrine of pay and recovery cannot be applied to the case on hand and consequently, mulcted entire liability on the first respondent/owner.

9. The learned counsel for the appellant has relied on the decision of this Court in ***C.M.A(MD)No.621 of 2015, dated 22.12.2020***, wherein this Court has held that the offending vehicle driver had license to drive the LMV/HTV, but he had no license to drive the two wheelers on the



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date of accident, has applied the doctrine of pay and recovery and directed the appellant/insurance company to pay the award amount to the claimant and then to recover the same from the owner of the vehicle and the relevant passage is extracted hereunder :

*“14.The next main contention of the Appellant is that the second respondent/first respondent had no valid driving license on the date of accident and that since there is violation of main policy condition, the Insurance Company is no way responsible for the claim. No doubt the Appellant has summoned and examined the staff attached to the Regional Transport Officer, Triunelveli and through him proved the fact that the second respondent had license to drive the LMV and HTV, but he had no license to drive the two wheelers on the date of accident. Considering the above, the trial Court, by relying on the decision of our Madras High Court reported in **2013 (1) TN MAC 146 [United India Insurance Company Vs.Giri Prasath,** has rightly applied the doctrine of pay and recovery and directed the Appellant/Insurance Company to pay the claim amount to the claimant and then to recover the same from the owner of the vehicle.”*

10. Considering the policy violation, this Court is of the view that this is a fit case to apply the doctrine of pay and recovery. But, the



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Tribunal, without considering the legal position in proper perspective, has mulcted the entire liability on the first respondent/owner of the vehicle. Hence, this Court has no hesitation to hold that the finding of the Tribunal, in mulcting liability on the first respondent/owner of the vehicle without invoking doctrine of pay and recovery, is not proper and the same is liable to be set aside. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

11. In view of the above, the award passed by the Tribunal in M.C.O.P.No.578 of 2004, dated 28.12.2007 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court/Special Court, Pudukottai, is modified to the effect that the second respondent/insurer shall pay the award amount at the first instance and thereafter, recover the same from the first respondent/owner of the vehicle and that the quantum and the interest awarded at by the Tribunal are confirmed.



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12. Accordingly, the Civil Miscellaneous Appeal is allowed to the extent stated above. Parties are directed to bear their own costs.

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

To

- 1.The Motor Accident Claims Tribunal/Additional District and Sessions Court/Special Court, Pudukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.962 of 2011

22.08.2023