BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.278 of 2023
and
C.M.P.(MD)No.3395 of 2023

The Divisional Manager,
The New India Assurance Company Limited.,
First Floor, Pillar's Gate,
Balamore Road,
Opposite Anna Stadium,
Nagercoil-629 001,
Kanyakumari District. ...Appellant/Petitioner

Vs.

1.Valsala
2.Mahesh ...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.80 of 2019 dated 15.11.2022 on the file of the Motor Accidents Claims Tribunal, Kuzhithurai cum Subordinate Court, Kuzhithurai.

For Appellant	: Mr.M.S.Suresh Kumar
For R1	: Mr.S.Sivakumar
For R2	: No Appearance

JUDGMENT

This appeal has been filed challenging the order of the Tribunal directing the appellant to pay the entire compensation amount instead of directing the appellant to pay and recover, despite the fact that there is a violation of policy condition. In respect of other aspects, the appellant has not challenged the findings of the Tribunal.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)The claim petition has been filed seeking compensation by the claimant for the injuries sustained in the accident that had occurred on 16.02.2019. The claimant was walking from east to west on the soil portion of the road. At that time the two wheeler of the first respondent bearing registration No.TN-75-AH-4003 driven by its rider in the same direction in a rash and negligent manner, hit the claimant. As a result, the claimant sustained injuries. She had taken treatment for 14 days as inpatient.

(ii)Before the Tribunal, the Insurance Company contended that the rider of the motorcycle did not possess valid driving license at the time of accident and the policy condition has also been violated. Hence, the Insurance Company is not liable to pay the compensation.

(iii)Despite notice was issued to the first respondent to produce the license, no license was forthcoming.

4.Before the Tribunal, on the side of the claimant P.W.1 was examined and Ex.P1 to Ex.P14 were marked and on the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

5.Based on the oral and documentary evidence, the Tribunal had found that the first respondent was rash and negligent in riding the motorcycle and directed the appellant herein to pay the entire compensation. Challenging the same, the present appeal is filed by the Insurance Company.

6.The learned counsel for the appellant submitted that in a case of driving without valid driving license by the owner or rider of the vehicle, only pay and recovery has to be ordered, as it is the violation of policy conditions. Further, they have examined R.W.1 and R.W.2 to prove that the first respondent/rider of the motorcycle did not have any valid license at the time of accident. Despite the same, the Tribunal had directed the Insurance Company to pay the compensation and the same is not valid in the eye of law.

7.I have heard the learned counsel appearing on either side and perused the entire materials placed on record.

8.Admittedly, the Insurance Company had discharged their burden to show that no license was possessed by the owner cum driver of the offending vehicle at the relevant point of time. Further, despite notice was issued on the first respondent to produce the original license before the Tribunal, he did not turn up to produce the same.

9.In such view of the matter, this Court is of the view that the finding of the Tribunal directing the Insurance Company to pay the entire compensation has to be set aside and modified to the effect that the Insurance Company shall pay the compensation amount at first to the claimant and recover the same from the owner of the vehicle as per law. As the quantum and other aspects are not challenged by the Insurance Company, this Court is inclined to confirm the compensation awarded by the Tribunal with the above said modification.

10.Accordingly, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is hereby modified to the extent stated below.

11.The Insurance company is directed to deposit the entire compensation amount as awarded by the Tribunal with interest at the rate of 7.5% from the date of petition till the date of realization at the first instance to the credit of M.C.O.P.No.80 of 2019, on the file of the Motor Accident Claims Tribunal/Sub Court, Kuzhithurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the second respondent. On such deposit, the claimant is permitted to withdraw the same, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

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

1.The Motor Accident Claims Tribunal/
Sub Court, Kuzhithurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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