



C.M.A(MD).No.471 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.471 of 2019

and

C.M.P(MD)No.5549 of 2019

The Branch Manager,
New India Assurance Company Limited,
96, Bharathiyar Road,
Sattur.

(Policy No.72170131080100200098)

... Appellant/2nd Respondent

vs.

1.Govindasamy

... Respondent/Petitioner

2.Malliga

...Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, Sub Court, Srivilliputhur in M.C.O.P.No.15 of 2011, dated 22nd day of August, 2017.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



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JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Srivilliputhur in M.C.O.P.No.15 of 2011 primarily on the ground of liability.

2. According to the injured claimant, while he was walking on the road on 29.03.2010 at about 06.00 p.m., the bus owned by the 1st respondent and insured with the 2nd respondent was driven in a rash and negligent manner and it dashed against him causing grievous injuries. Hence, he prayed for a sum of Rs.2,79,500/- as compensation.

3. The owner of the mini bus had remained ex parte and the insurance company has filed a counter affidavit taking a specific stand in Paragraph No.7 to the effect that the driver of the mini bus, namely Mareeswaran was not holding any valid and effective driving license at the time of accident.



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4. The tribunal after considering the oral and documentary evidence, had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the 1st respondent. However, the tribunal found that the insurance company has not established the fact that the driver of the mini bus was not having a driving license at the relevant point of time. The tribunal proceeded to award a sum of Rs.1,41,216/- as compensation. Since the tribunal found that the insurance company has not established non-holding of the driving license of the offending vehicle, it mulcted the liability upon the insurance company. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant, in Paragraph No.7 of the counter affidavit, they have taken a specific stand that the driver of the offending vehicle was not having a driving license at the relevant point of time. The insurance company had issued a notice under Exhibit R.2 to the owner of the vehicle and the same has been acknowledged under Exhibit R.3. However, the owner of the vehicle has



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not chosen to respond. The insurance company has also examined officials from RTO office as R.W.2. Therefore, according to the learned counsel for the appellant, they have taken all steps to establish that the driver of the vehicle did not have a valid and effective driving license. Therefore, the award of the tribunal should be modified to the effect that an order of pay and recovery may be passed.

6. Though the owner of the vehicle is represented through a counsel, there is no representation.

7. The vehicle belonging to the 1st respondent had caused the accident in which the claimant was injured. Admittedly, the said offending vehicle, namely the mini bus was insured with the appellant insurance company. The insurance company has taken a specific stand in the counter that the driver of the mini bus was not having any driving license at the relevant point of time. Though the owner of the vehicle was served, she has chosen not to appear before the tribunal or has let in any evidence. The insurance company has issued a legal notice to the owner



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under Exhibit R.2 calling upon her to furnish the details of the driver along with the driving license. Though the said legal notice has been received by the owner under Exhibit R.3, there was no response. The company has also examined RTO official as R.W.2. Therefore, whatever that is possible, the insurance company has done in order to prove that the driver of the mini bus was not having driving license at the relevant point of time. Therefore, the finding of the tribunal that the insurance company had not discharged their burden in proving the non-holding of the driving license is not legally sustainable. Therefore, this Court is of the considered opinion that the driver of the offending vehicle was not having valid driving license at the relevant point of time and it is a clear case of violation of policy conditions.

8. In view of the above said deliberations, the award of the tribunal is modified to the effect that the appellant shall satisfy the award amount and thereafter, recover the same from the 1st respondent in the claim petition / 2nd respondent in the appeal by filing execution proceedings in the same claim petition.



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9. With the said observations, the Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

26 .06.2023

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

- 1.The Motor Accident Claims Tribunal,
Sub Court,
Srivilliputhur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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