



C.M.A(MD)No.658 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 17.07.2023

Pronounced On : 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.658 of 2019

and

C.M.P.(MD)No.8086 of 2019

Universal Sampo General Insurance
Co., Ltd., No.657, 3rd Floor,
Threestar Tower,
Avinachi Road, Lakshmi Mills
New Junction, P.N.Palayam,
Coimbatore.

: Appellant / 2nd Respondent

Vs.

1.Perumal

: 1st Respondent/ Petitioner

2.P.Ganesan

: 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 22.06.2018 made in M.C.O.P.No.400 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge for Motor Accident Claims Tribunal Cases), Trichy.



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For Appellant : Mr.S.Srinivasaraghavan

For Respondents : Mr.K.M.Karunakaran, for R1.

: No Appearance, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award dated 22.06.2018, passed in M.C.O.P.No.400 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Trichy.

2. The insurer, who was directed to pay compensation of Rs.1,42,480/- for the disability suffered by the claimant, consequent to an accident occurred on 17.10.2013, challenged the adoption of pay and recovery.

3. The learned counsel for the appellant/insurer would submit that the Tribunal has given a specific finding that the driver of insured vehicle was not having valid driving license at the time of accident; that since the defence of absence of driving license was proved by the appellant in the manner known to law; that the Tribunal ought to have absolved the



liability of the appellant from indemnifying the owner of the vehicle; that the owner of the vehicle had permitted the driver of the insured vehicle to drive the vehicle, even after knowing that the driver of the vehicle was without any driving license and the same would amount to basic and fundamental breach of the terms and conditions of the policy and that therefore, the impugned award passed by the Tribunal is liable to be set aside.

4. The only point that arises for consideration is as to whether the Tribunal adopting the doctrine of pay and recover, directing the appellant/insurer to pay compensation to the claimant and then to claim the same from the owner of the vehicle is proper and is in accordance with law ?

5. It is settled law that the insurer, who is taking a plea that the driver of the insured vehicle had driven the vehicle without valid driving license, it is for the insurer to prove the same. In the case on hand, admittedly the appellant/insurer has not chosen to adduce any evidence, but the Tribunal taking note of the entry in the Motor Vehicle Inspection report and the charges levelled in the charge sheet filed before the



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jurisdictional Court and the judgment of the learned Magistrate convicting the second respondent's driver for the offence under Sections 279, 338 IPC and under Section 3 r/w 181 of Motor Vehicles Act, has come to a decision that the second respondent's driver had been driving the offending vehicle without any valid driving license.

6. The Tribunal, by observing that since the second respondent has violated the policy conditions, has held that the appellant cannot be made liable. But at the same time, the Tribunal, taking note of the judgment reported in **2012 2 TN MAC 352 [The Manager, Iffco Tokyo General Insurance Co., Ltd., Vs. Selvama and others]**, has adopted pay and recovery principle and thereby directed the appellant to pay compensation and thereafter, recover the same from the second respondent.

7. Applying the dictum laid down by the Hon'ble Supreme Court in **National Insurance Company Vs.Swaran Singh** reported in **AIR 2004 SC 1531** and the Hon'ble Division Bench of this Court in **United India Insurance Company Ltd., Vs. S.Saravanan** reported in **2009 2 TNMAC 103**, the finding of the Tribunal in adopting pay and recovery principle to the case on hand cannot be found fault with.



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6. Except the above, the appellant has not canvassed any other ground to impugn the award. Hence, this Court concludes that the above appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

7. In the result, the Civil Miscellaneous Appeal is dismissed. Parties are directed to bear their own costs.

24.07.2023

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

1.The Motor Accidents Claims Tribunal
(Special Subordinate Judge for Motor
Accident Claims Tribunal Cases), Trichy.

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
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and
C.M.P.(MD)No.8086 of 2019

24.07.2023