BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2023

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THE HONOURABLE MRS.JUSTICE **N.MALA**

C.M.A(MD)No.1171 of 2022
and
CMP(MD)No.11952 of 2022

The National Insurance Company Limited,
representing through the Divisional Manager,
No.5-A, Sub Collector Office Road,
Dindigul Taluk, Dindigul.
... Appellant/2nd Respondent.

Vs

1.Minor Sekar ... 1st Respondent/Petitioner

(the first respondent represented through his father and guardian by name Ganesan)

2.P.Chitra ... 2nd Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal/Special Subordinate Judge (to deal with MCOP Cases), Dindigul, in M.C.O.P.No.545 of 2018, dated 26.10.2021, by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For Respondents : No Appearance

JUDGMENT

The appeal is filed by the Insurance Company challenging the award dated 26.10.2021 passed in M.C.O.P.No.545 of 2018 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge (to deal with MCOP Cases), Dindigul.

2.The appeal is filed on the limited ground that the Tribunal had failed to order pay and recover as the driver of the offending TATA ACE Van bearing Reg.No.TN-57-AD-6337 had no driving license and as such there was a violation of the policy.

3.The brief facts necessary for determination of the appeal:-

On 25.09.2013, the minor claimant was travelling in a two wheeler driven by his relative. At that time, the TATA ACE vehicle bearing Reg.No.TN-57-AD-6337, which was driven by its driver in a rash and negligent manner and hit the two wheeler causing grievous injuries to the minor claimant. The claim petition was therefore filed by the father of the minor claimant, claiming Rs.5 lakhs as compensation for the injuries sustained by the minor in the accident.

4.The Tribunal on an assessment of the evidence on record held that the accident occurred only due to the rash and negligent driving of the TATA ACE driver and awarded a sum of Rs.98,000/- along with 7.5% interest per annum as compensation.

5.The Insurance Company in order to prove that the driver of the TATA ACE Van did not possess the valid driving license at the time of accident examined R.W.1, Mr.Ilango, the Junior Assistant of Regional Transport Office Office, Dindigul and R.W.2, Mr.Gowthaman, the Senior Assistant of National Insurance Company Limited, Dindigul. The Tribunal inspite of the evidence of R.W.1 & R.W.2 mulcted the liability on the appellant/Insurance Company. Aggrieved against the order of the Tribunal in mulcting the entire liability on the appellant/Insurance Company, the present appeal is filed by the Insurance Company.

6.The learned counsel for the appellant submitted that the Tribunal ought to have ordered pay and recover as the Insurance Company has clearly established that the driver of the offending vehicle did not have a valid driving license at the time of the accident.

7.Though the respondents were served in the appeal, they have not appeared through counsel or in person.

8.I have heard the learned counsel for the appellant and I have perused the materials available on record.

9.As already stated there is no dispute regarding negligence and on the quantum of compensation awarded by the Tribunal. The only issue raised in this appeal is as regards the order of the Tribunal directing the appellant/Insurance Company to pay the compensation without ordering recovery of the same from the insured as the insured had violated the terms of the policy. In my view that the burden is on the appellant/Insurance Company to prove absence of driving license and violation of the terms & policy. In my view the Insurance Company has proved that the driver of the TATA ACE Van did not possess a valid driving license by examining R.W.1, the Junior Assistant of Regional Transport Office, Dindigul as also R.W.2, Gowthaman, who is the official of the appellant/Insurance Company. The Tribunal though referred to the evidence of R.W.1 and R.W.2 while passing the award, did not give any finding on the liability of the Insurance Company. The Tribunal failed to frame any issue on the violation of policy condition and the liability of the Insurance Company to pay the entire compensation. Therefore, I am of the view that in the light of the evidence of R.W.1 and the judgment of the Hon'ble Supreme Court as well as the High Court, the Tribunal has erred in not issuing a direction for pay and recover.

10.In the light of the above discussion, the appeal is allowed and the order of the Tribunal is modified to the extent that the Insurance Company is directed to satisfy the award and thereafter, recover the same from the second respondent. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

11.The learned counsel for the appellant submits that in pursuance of the order of the Trial Court, the entire award amount was deposited. In view of the above, the appellant/Insurance Company is at liberty to initiate recovery proceedings against the second respondent.

02.02.2023

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

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To

1.The Motor Accidents Claims Tribunal/Special Subordinate Judge
(to deal with MCOP Cases), Dindigul,

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

N.MALA, J

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