IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1690 of 2020
And
C.M.P.No.12456 of 2020

M/s.Iffco Tokio General Insurance Company Limited
No.2, 1st Floor, SNR, Arcade,
Ayyappa Temple Road,
Jarahalli Cross, Peenya,
Bangalore, Karnataka State. ... Appellant

Vs.

1.Kumaran @ Algukumaran
2.U.Rajesh Joshi ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.652 of 2014, dated 08.01.2020 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri.

For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates
For Respondents : R1 – NRN
R2 – Mr.P.D.Selvaraj for R2

J U D G M E N T

The second respondent before the Motor Accidents Claims

Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 08.01.2020 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri, in M.C.O.P.No.652 of 2014.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal alleging that on 04.09.2011 at about 11.00a.m., the first respondent was walking in the let side of Thirupattur to Dharmapuri Main Road, Pochampalli. At that time, the second respondent driver drove the motor cycle bearing Registration No.KA-02-W-1531 in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained injuries. Thereafter the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs and after adjudication, the Tribunal awarded a sum of Rs.3,58,035/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till the date of deposit and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that aggrieved by the fastening of liability on the appellant, this appeal has been filed. The learned counsel further submitted that the subject vehicle was insured with the appellant from / on 04.09.2011 – 14:16:12 to midnight on 03.09.2012 – 00:00:00 and the alleged accident took place on 04.09.2011 at 11.00 a.m. Hence, the subject vehicle was not insured with the appellant at the time of the alleged accident. Further, the second respondent did not possess valid driving licence at the time of accident. In the absence of any valid driving licence, the Tribunal ought to have awarded atleast pay and recovery, however, the Tribunal directed the appellant to deposit the entire compensation, which is not sustainable one.

4.The learned counsel appearing for the second respondent submitted that the policy itself makes it clear that the policy is covering from 04.09.2011 – 00.00.00 hours to 03.09.2012 – 23.59.59 hours and the accident occurred on 04.09.2011 at about 11.00 a.m., which is well within the coverage period. The learned counsel fairly submitted that though the second respondent possess valid licence, he did not produce the same before the Tribunal and prayed that in the event of this Court ordering pay and recovery, liberty may be granted to the second respondent to produce the licence before the

Tribunal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record. Till date the appellant is not able to serve notice on the first respondent.

6.Perusal of the Insurance Policy marked as Ex.R1 before the Tribunal makes it clear that the policy was issued on 04.09.2011 at 14:16:12 and the period of insurance is from 04.09.2011 – 00:00:00 to Midnight on 03.09.2012 – 00:00:00. Hence, the accident period is covered in the insurance policy and the grievance of the appellant Insurance Company is mis-conceived. However, in respect of non availability of valid driving licence of the second respondent, this Court is inclined to order pay and recovery.

7.Accordingly, this Court directs the appellant Insurance Company to deposit the entire award amount before the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the entire award amount, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

8.The appellant Insurance Company shall recover the entire compensation along with interest from the owner of the vehicle involved in the accident/ second respondent in the same petition by filing Execution Petition. If the second respondent possess valid driving licence, liberty is granted to the second respondent to produce the driving licence before the Tribunal. The Tribunal is directed to adjudicate the issue at the time of recovery proceedings filed by the Insurance Company.

9.The civil miscellaneous appeal is dismissed. The judgment and decree dated 08.01.2020 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Dharmapuri, in M.C.O.P.No.652 of 2014, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

07.11.2024

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Index: Yes/ No

Speaking Order: Yes/ No
NCC: Yes/ No

M.DHANDAPANI,J.
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To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court, Dharmapuri.

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