BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1072 of 2024
and
C.M.P.(MD) No.11142 of 2024

A.Mohamed Sadhik
S/o.Abdul Razak ... Appellant

Vs.

1.P.Kesavan
S/o.Palaniandi

2.Branch Manager,
Reliance General Insurance Company Ltd.,
Shalini Towers, 1st Floor, 172,
South Main Street,
Thanjavur District. ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award passed in M.C.O.P.No.303 of 2021 dated 31.03.2023 on the file of the Motor Accident Claims Tribunal [Special Sub Court], Thanjavur insofar as it relates to pay the compensation amount by the second respondent and recover it from the appellant is concerned.

For Appellant : Mr.M.Muthugeethayan

For R1 : Mr.G.Karnan

For R2 : Mr.V.Sakthivel

JUDGMENT

The instant appeal has been filed by the owner of the insured vehicle aggrieved by the direction of the Tribunal to the second respondent, Insurance Company, to pay the compensation and recover the same from the appellant, as there was a breach of policy conditions.

2. The facts leading to the filing of the claim petition and the manner of the accident are not in dispute. The quantum of compensation is also not in dispute. Therefore, the facts leading to the filing of the claim petition are unnecessary for the disposal of this appeal.

3. The learned counsel on either side submitted that the second respondent, Insurance Company, has already deposited the entire amount of compensation awarded by the Tribunal, and the first respondent/ claimant has also withdrawn the said amount.

4. The learned counsel for the appellant, the owner of the insured vehicle, submitted that in the counter to the claim petition, the appellant has stated that since he had already sold the vehicle to one Anwar Sadhik, S/o.Akbar Ali, he could not produce the driving licence of the driver of the insured vehicle with whom he has no connection; that the Tribunal had merely relied on the endorsement made in the Motor Vehicle Inspector's Report to the effect that the driving licence was not produced and held that the driver of the vehicle did not have a valid driving licence, which is contrary to the settled position of law; and that the burden is on the Insurance Company to establish the said fact and hence, the appellant may be given an opportunity to establish before the Tribunal that the vehicle was already sold to the third party and the driver had a valid driving licence.

5. The learned counsel for the second respondent, Insurance Company, per contra, submitted that the appellant ought to have examined the transferee and should have taken steps to make him a party before the Tribunal and, in any case, should have produced the driving licence of the driver, and that in the absence of the same, the issue cannot be raised in this appeal.

6. The only point for consideration in the instant appeal is whether the second respondent had established that there was a breach of policy conditions and the direction to pay and recover is justified.

7. The counter filed by the appellant before the Tribunal shows that the insured vehicle was already sold as early as 02.11.2017. The appellant has produced the delivery receipt, which is said to have been issued to the said Anwar Sadhik. However, the same has not been marked before the Tribunal. Admittedly, the vehicle still stands in the name of the appellant, and hence, he cannot be exonerated if the driver did not have a valid driving licence. The finding of the Tribunal that the driver of the insured vehicle did not have a valid driving licence is based on the endorsement made by the Motor Vehicle Inspector in his report. In the light of the evidence, this Court is of the view that one more opportunity should be given to the appellant to establish that the driver of the insured vehicle had a valid licence. For this purpose, it is open for the appellant to implead the transferee and the driver of the insured vehicle whose name was found in the Motor Vehicle Inspector's Report and any other necessary party for the said purpose. It is also made clear that if it is established that the driver did not have a valid driving licence, the

appellant would be liable to pay the compensation and take appropriate proceedings against the transferee in accordance with law.

8. Thus, the matter is remitted back to the Tribunal only for the limited purpose of deciding the above issue. The finding on negligence and the quantum of compensation awarded by the Tribunal are confirmed. It is also open for the second respondent, Insurance Company, to adduce further evidence, if necessary, to prove that there was no valid driving licence.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Note: Registry is directed to return the original records to the Tribunal.

Copy To:

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur,
Thanjavur District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.

SUNDER MOHAN, J.

JEN

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