BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.154 of 2018
and
C.M.P(MD) No.2300 of 2018

M/s.United India Insurance Company Limited,
Represented by its Branch Manager,
Bombay Stores Building, 2nd Floor,
23-C, Keela Radha Veedi,
Tenkasi,
Tirunelveli District. ... Appellant/2nd Respondent

-vs-

1. Antony Joshep ... 1st Respondent/1st Respondent

2. Jothi @ Jopthiyammal ... 2nd Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 12.06.2009 in M.C.O.P.No.1495 of 2007 on the file of the Motor Accident Claims Tribunal -cum-Additional District Sessions Judge, (Fast Track Court No.1), Tirunelveli.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company challenging the award passed in M.C.O.P.No. 1495 of 2007, on the file of the Motor Accident Claims Tribunal-cum-Additional District Sessions Judge, (Fast Track Court No.1), Tirunelveli, primarily on the ground of liability.

2. The second respondent/injured claimant, while she was standing on the road, she sustained grievous injuries due to the rash and negligent driving on the part of the driver of the two wheeler owned by the first respondent and insured with the appellant/second respondent. She has prayed for compensation a sum of Rs.5,00,000/- (Rupees Five Lakhs only).

3. The owner of the two wheeler had remained ex-parte and the Insurance Company has taken a defence that the driver of the two wheeler did not have a valid and effective driving license on the date of accident.

4. The Tribunal, after considering the evidence on either side, has 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 two wheeler. As far as the defence of no driving license is concerned, the Tribunal had arrived at a finding that the driver was charge sheeted only under the provisions of I.P.C, and he was not charge sheeted under the Motor Vehicles Act. Based upon Ex.P.2- Charge Sheet, the Tribunal had arrived at a finding that the Insurance Company has not proved that the driver of the offending vehicle was not having a valid driving license at the relevant point of time. Thereafter, the Tribunal has proceeded to pass an award a sum of Rs.1,38,664/- along with interest at the rate of 7.5% p.a. This award is under challenge in the present Civil Miscellaneous Appeal.

5. According to the learned counsel appearing for the appellant, though the Insurance Company has taken a specific stand in the counter affidavit with regard to the non availability of driving license, the owner of the vehicle had remained *exparte.* He further contended that the Insurance Company has examined the RTO as R.W.1 and they have established the fact that the driver of the offending vehicle did not have a valid driving license at the relevant point of time. Hence, he prayed for passing an order of pay and recovery.

6. Though notices were served upon the respondents and their names were printed in the cause list, they have not chosen to appear in persons or through their counsel.

7. I have carefully considered the submissions made by the learned counsel for the appellant.

8. The only issue that arises for consideration is that whether the Insurance Company is able to prove that the driver of the offending vehicle did not have a valid driving license at the relevant point of time or not.

9. In the counter affidavit, the Insurance Company has taken a specific stand that the driver of the offending vehicle did not have a valid and effective driving license on the date of accident. They have examined the RTO, as R.W.1, who had deposed that unless the driving license number is made known, he could not be in a position to say whether the driver had driving license at the relevant point of time or not. The Insurance Company has mainly relied upon the report submitted by their Investigation Officer to the effect that the driving license was not produced at the time of inspection. However, the Investigation Officer has also not been examined. That apart, a

perusal of Ex.P.2- Charge Sheet, reveals that the driver of the offending vehicle has not been charge sheeted for any of the offences under the Motor Vehicles Act. In such circumstances, the Tribunal was right in arriving at a finding that the appellant/Insurance Company has not proved that the driver of the offending vehicle was not having a valid driving license on the date of accident.

10. In view of the above said facts, there are no merits in the Appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

26.04.2024

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

1. The Motor Accident Claims Tribunal
-cum-Additional District Sessions Judge,
(Fast Track Court No.1), Tirunelveli.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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