



C.M.A(MD)Nos.1107 & 1108 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1107 & 1108 of 2017

C.M.A(MD)No.1107 of 2017:

1.The Branch Manager,
United India Insurance Co.Ltd.,
Micro Office,
Robin Complex 2nd Floor,
Nagercoil Road,
Thingal Santhai,
Kanyakumari District.

2.The Branch Manager,
United India Insurance Co.Ltd.,
PPK Building Main Road,
Marthandam,
Kanyakumari District.

... Appellants/Respondents 3&4

Vs.

1.Sasikala ... Respondent/Petitioner

2.Bright Jose ... Respondent/1st Respondent

3.Muralidharan ... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, challenging the award and decree dated 03.08.2017 made in M.C.O.P.No.44 of 2014 on the file of Motor Accident Claims Tribunal, Kuzhithurai in so far as the tribunal has not passed the decree



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in favour of the appellant/insurance company to recover the amount ordered to be paid to the claimants by the insurance company.

C.M.A(MD)No.1108 of 2017:

1.The Branch Manager,
United India Insurance Co.Ltd.,
Micro Office,
Robin Complex 2nd Floor,
Nagercoil Road,
Thingal Santhai,
Kanyakumari District.

2.The Branch Manager,
United India Insurance Co.Ltd.,
No.3/33 B, PPK Building Main Road,
Marthandam,
Kanyakumari District.

... Appellants/Respondents 3&4

Vs.

1.Sobhanam ... Respondent/Petitioner

2.Bright Jose ... Respondent/1st Respondent

3.Muralidharan ... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, challenging the award and decree dated 03.08.2017 made in M.C.O.P.No.35 of 2014 on the file of Motor Accident Claims Tribunal, Kuzhithurai in so far as the tribunal has not passed the decree in favour of the appellant/insurance company to recover the amount ordered to be paid to the claimants by the insurance company.

For Appellants : Mr.A.Shajahan
(In both cases)



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For R1 : Mr.S.Sivakumar
(In both cases)

For R3 : Mr.B.Christopher
(In both cases)

COMMON JUDGEMENT

The present appeals have been filed by the insurance company challenging an award in M.C.O.P.Nos.35 and 44 of 2014 on the file of Motor Accident Claims Tribunal, Kuzhithurai.

2. The husband, namely Shobhanam along with his wife Sasikala as a pillion rider were travelling in a motor bike. The vehicle belonging to the 1st respondent came and dashed on the rear side of the said vehicle and the husband, namely Shobhanam and the wife Sasikala got injured in the said accident. The husband had filed M.C.O.P.No.35 of 2014 seeking a compensation of Rs.4,00,000/- towards the injuries sustained by him. The wife had filed M.C.O.P.No.44 of 2014 seeking a compensation of Rs.6,00,000/- towards injuries sustained by her. The tribunal had recorded independent evidence in both the claim petitions and awarded a sum of Rs.1,07,196/- to the husband in M.C.O.P.No.35 of 2014 and Rs. 1,53,100/- to the wife in M.C.O.P.No.44 of 2014. Challenging both the



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awards, the present appeals have been filed by the insurance company.

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3. According to the learned counsel appearing for the appellant, the offending vehicle was owned by the 2nd respondent, namely Muralidharan Nair and it was driven by the 1st respondent, namely Bright Jose. The said vehicle was insured with the 3rd respondent/appellant in the above appeal. According to the learned counsel appearing for the appellant, the driver of the offending vehicle was not having valid and effective driving license at the time of the accident and therefore, the tribunal ought not to have fixed the liability upon the insurance company without granting liberty to the company to satisfy the award and thereafter, recover the amount from the owner of the vehicle.

4. The learned counsel for the appellant pointed out that though the driver and the owner of the vehicle were served, they have remained *ex parte* and they have not even filed a counter. No attempt was made on behalf of them to place the driving license of the 1st respondent before the Court. The appellant company had called for a document from the Regional Transport Office, Marthandam, dated 10.07.2017 and it is marked as Exhibit R.2. As per the said exhibit, the 1st respondent was not having any driving license from the said Regional Transport Office. The



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said company has also examined one Junior Assistant from the said Regional Transport Office as R.W.2 to prove that there was no driving license in the name of the 1st respondent who drove the offending vehicle at the time of the accident. Therefore, according to the learned counsel appearing for the appellant, sufficient steps have been taken on the side of the insurance company to prove that the 1st respondent did not possess any driving license at the time of accident. Therefore, he prayed that an order of recovery may be granted to the appellant / insurance company.

5. Per contra, the learned counsel appearing for the owner of the vehicle had contended that he had sold the vehicle on 17.10.2012 itself and therefore, he is not liable to pay any compensation for the injuries sustained by the husband and wife. Though he had remained *ex parte* before the tribunal, he had produced a document to the effect that he had entered into an agreement with the 1st respondent, namely Bright Jose who is a financier, handing over the vehicle to him, so that he could sell the vehicle to some third parties. Therefore, according to the learned counsel appearing for the owner of the vehicle, the vehicle having been sold to the 1st respondent prior to the date of the accident he is not liable to pay any compensation and hence, the prayer of the insurance company for pay and recovery may not be granted.



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6. I have carefully considered the submissions made on either side.

7. The appellant insurance company had taken a specific stand in their counter that the 1st respondent who had driven the offending vehicle did not have valid driving license at the time of the accident. The 1st respondent who drove the offending vehicle and the 2nd respondent who is the registered owner of the vehicle have remained *ex parte* before the tribunal.

8. Though the document has not been marked and only a Xerox copy is produced by way of typedset of papers, this Court has perused the vehicle sale agreement produced by the 2nd respondent, who is the owner of the vehicle on the date of the accident. A perusal of the said document would clearly indicate that the vehicle has just been handed over by Muralidharan Nair to Bright Jose who is a financier, so that he can sell the same to a third party. Till a third party comes for purchasing the property, the vehicle continues to remain in the name of Muralidharan Nair himself. A perusal of Exhibit R.1 will clearly indicate that even after the alleged vehicle sale agreement, dated 07.12.2012, the insurance has been renewed on 26.10.2012 only in the name of



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Muralidharan Nair. The motor vehicle inspector's report marked as Exhibit P.2 will clearly indicate that no driving license was produced at the time of inspection. Even during the appeal stage, no driving license of this driver has been produced. Therefore, it is clear that the vehicle continued to be owned by Muralidharan Nair. In view of several judgments of the Hon'ble Supreme Court, the registered owner would continue to be liable for any accident that has taken place unless the registration is transferred in the name of the purchaser. In the present case, the owner has just handed over to a financier, who is waiting to find out a purchaser to alienate the same. Therefore, by no stretch of imagination, the said Muralidharan Nair could be considered to have sold the vehicle.

9. Admittedly, the vehicle has been driven by one Bright Jose who did not possess any driving license. The insurance company has taken sufficient steps to discharge their burden by examining the Junior Assistant of Marthandam Regional Transport Office as R.W.2 and by marking a letter from the said Regional Transport Office as Exhibit R.2 to prove that there was no driving license in the name of Bright Jose. Therefore, the appellant insurance company have categorically proved that the driver of the offending vehicle did not have any driving license at the time of the accident.



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10. In view of the above said facts, there is a clear policy violation and the insurance company has to satisfy the award and recover the same from the owner of the vehicle, namely Muralidharan Nair.

11. In view of the above said deliberations, the award of the tribunal with regard to quantum is hereby confirmed and the award of the tribunal fixing liability on the appellant insurance company is hereby modified to the effect that the appellant insurance company is directed to satisfy the award and recover the same from the owner of the vehicle by filing execution proceedings in the respective Motor Accident Claim petitions.

12. With the above said modification, both the Civil Miscellaneous Appeals stand allowed to the extent as stated above. No costs.

23.03.2023

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

- 1.The Motor Accident Claims Tribunal,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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