

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.3126 of 2014

National Insurance Company Limited,
LRN Colony,
Sarada College Main Road,
Hasthampatty, Salem.

.. Appellant

Versus

1.S.Mariappan
2.Miss. Akila

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as against the award and decree dated 28.10.2013 made in M.C.O.P.No.265 of 2007 on the file of Motor Accident Claims Tribunal, (Chief Judicial Magistrate, Salem).

For appellant : Mr.S.Arun Kumar

For respondent : Mr.R.Marudhachalamurthy (R1)
No appearance (R2)

J U D G M E N T

This Appeal has been filed by the Insurance Company/the second respondent in M.C.O.P.No.265 of 2007, challenging the liability to pay compensation awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem.

Brief Facts:

The claimant Mariappan, aged 27 years, self employed, earning a sum of Rs.6,000/- per month, met with an accident on 31.03.2007, while going from Salem to Attur . The claimant Mariappan was travelling as a Pillion rider in a TVS XL Super No.TN-30-M-9614, which was driven by one Yuvaraj. While, they were going on the extreme left side of the Salem-Attur Main road, at about 12.00 hours, while they were proceeding near Masinaickenpatty bus stop, a Maruthi car bearing registration No.TN-30-P-0473, came from South to North i.e. From Varagmpadi to enter into Attur main road, which was driven by its driver in

a rash and negligent manner, hit against the right back side of the Motor Cycle, thereby caused accident, as a result of which, the claimant sustained grievous injuries.

3. The case of the claimant is that, only on account of rash and negligent driving of the driver of Maruthi car, the claimant met with an accident. Therefore, the owner of the Maruti car as well as the Insurance Company are liable to pay compensation. The tribunal has given a finding that the driver of the Maruti car was responsible for the accident. The tribunal has relied upon Ex.P7 Judgment of the Criminal Court, wherein the driver of the Maruti car is convicted for the offence punishable under Sections 279, 337 and 338 I.P.C..

5. Heard both sides.

6. So far as the liability is concerned, liability is in dispute on the ground that the driver of the two wheeler is only having learners driving licence and three persons have travelled in the motor vehicle which is violation of the policy condition. The owner of the car/second respondent was not having valid license and the second respondent has not proved the contents of the Ex.R3 by examining the instructor Sarjan Singh, and therefore, the Insurance Company is not liable to pay the compensation is yet another contention. Section 3 of the Motor Vehicle Act is extracted hereunder:

Section.3- (a) Such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) Such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle ;

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on white background"

7. It is the contention of the learned counsel for the appellant that it is the duty of the claimant to show that the driver of the car was in possession of a valid driving licence and is competent to drive. Unless the proof is adduced, the tribunal ought not to have been fastened the liability on the Insurance Company. The owner of the Maruti car was examined as R.W.1 and marked learners license and Driving License along with

the explanation letters submitted by her to the second respondent as Exs. R1 to R3. In Ex.R3, it is stated that the first respondent was accompanied by one Surgan Singh (instructor) who is having valid driving licence, at the time of accident. It is the duty of the claimant to examine the instructor one Surgan Singh, to ascertain whether he accompanied the owner at the time of accident. The finding of the Tribunal that the Insurance Company is liable to pay compensation cannot be accepted. If the instructor was not present along with the driver of the Maruti car, at the time of accident, conditions prescribed under Rule 3 of the Motor Vehicle Act, stands violated and the Insurance Company cannot be made liable to pay compensation to the claimant. Under such circumstances, the tribunal should have safeguarded the recovery rights of the Insurance Company to recover the amount from the owner.

8. In the result, the Appeal is partly allowed with a direction to the Insurance Company to satisfy the award at Rs. 1,47,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit with a right to recover the same from the owner of the vehicle second respondent.

9. It is represented that the entire award amount has already been deposited. The claimant is at liberty to withdraw the same.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arr/gln

To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate) Salem.

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

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