IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2173 of 2008
and MP.No.1 of 2008

National Insurance Company Limited,
Branch Office,
305, Bangalore Road,
Krishnagiri. ... Appellant

Vs.

1.Santha
2.Gobushankar
3.Sivashankar
4.Minor Gomathi
(Minor represented by 1st respondent)
5.C.Venugopal ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2002 made in MCOP.No.201 of 2000 on the file of the Motor Accident Claims Tribunal (II Additional District Court), Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Vadivel
For Respondents : Mr.S.Balasubramaniam [for R1 to R4]
R5 - No appearance

JUDGMENT

The Insurance Company which has been mulcted with a liability to pay a compensation of Rs.6,08,000/- with interest @ 9% per annum along with the owner of the tempo van in a matter where the rider of the moped was killed in a road accident involving the said tempo van, has come forward with this appeal.

2. Before the Tribunal, the Insurance Company had taken a contention that the driver of the offending vehicle (tempo van) did not possess any valid and effective driving licence and this was not considered by the Tribunal when it made the appellant jointly and severally liable to pay the compensation along with the owner.

3. The learned counsel for the appellant submitted that the driver of the tempo van had only a licence to drive a non-transport vehicle where as the vehicle in question is a goods

carriage which is a transport vehicle for which its driver did not possess a valid licence, yet the Tribunal considered it as a valid and effective licence to drive the tempo van. At any rate, he argued, that the driver of the vehicle in question should have necessary endorsement/badge for driving a goods vehicle and relying on the evidence of R.W.1 and Exts.R-1 to R-4 it was further argued that inasmuch as no badge was issued to the driver of the vehicle, he could not be said to possess a valid and effective licence which is a violation of a condition of the policy and consequently the insurance company cannot be held liable.

4.Testimony of R.W.4, an official from Regional Transport Office which issued the driving licence, indicates that if the goods vehicle which the van in question is, is used for hire or reward, then its driver should have necessary badge. It therefore requires to be ascertained whether the said van was used for the own purpose of its owner or for hire or reward. The owner of the van as R.W.1 did not depose anything specifically about the nature of use to which the van was put to when the accident took place. Nor has he examined the driver of the vehicle to prove a point in his aid. Given the available evidence on record, I am constrained to hold that the offending vehicle could have been put to only commercial use at the time of accident.

5. This is a case where the doctrine of “pay and recover” should be applied and accordingly, the Insurance Company is directed to meet the entire liability arising out of the award passed with interest @ 9% per annum at the first instance and then may recover the same from the owner of the vehicle. The learned counsel for the Insurance Company submitted that the entire award amount has already been deposited into the Court and that the claimants have already withdrawn 50% of the award amount. The claimants are permitted to withdraw the remaining 50% of the award amount lying in Court deposit, if not already withdrawn. This appeal is thus partially allowed and consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ds

To

1.The Motor Accidents Claims Tribunal,
   II Additional District Court, Dharmapuri @ Krishnagiri.

+2 ccs to Mr.S.Balasubramaniam Advocate sr 73447

CMA.No.2173 of 2008

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