IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3 of 2007

Saraswathi. ... Appellant/Petitioner

Vs.

1. Govindaraj (Died)

2. The Oriental Insurance Company Ltd.,
Gudiyatham. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2006 made in M.C.O.P.No.568 of 1991 on the file of the Motor Accidents Claims Tribunal [Sub Court], Vellore.

For Appellant : Mr.C.Prabakaran

For R2 : Mr.J.Chandran

JUDGMENT

The claimant in M.C.O.P.No.568 of 1991 has preferred this appeal, challenging the award passed, to that extent where the award absolved the liability of the Insurance Company.

2. In an accident that had taken place on 01.07.1991, a pedestrian was fatally knocked down by the negligence of the driver of a lorry belonging to the first respondent and insured with the second respondent, pursuant to which the legal representatives of the deceased moved the Tribunal seeking a total compensation of Rs.2,75,000/- as against which, the Tribunal had passed an award of Rs.1,64,500/- payable without any interest. It appears that this M.C.O.P. was dismissed for default before the Tribunal and the necessary application for its restoration appears to have been filed only in the year 2002 and taking into account the conducts of the claimants in prosecuting the case, the Tribunal denied the appellant's interest payable on the compensation amount awarded.

3. The essential contest of the Insurance Company before the

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Tribunal was not that the driver at the relevant time did not posses a valid driving licence and accepting the said contention, the Tribunal held that there was a violation of policy condition and granted the advantage to the Insurance Company.

4. It is now settled law that any of the violation of the policy conditions falling under Sec. 149 of the Motor Vehicles Act, the Insurance Company would be liable to pay the compensation at the first instance and then to recover the same from the owner of the lorry. Accordingly, the Insurance Company/the second respondent herein is directed to pay the compensation amount with interest at 6% from 21.12.2006, the date on which this appeal was filed, within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be permitted to withdraw the amount deposited forthwith. The appeal is allowed accordingly. No Costs.

sd/
Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

kmi

To:

1. The Motor Accidents Claims Tribunal [Sub Court],
   Vellore.

2. The Section Officer,
   V.R.Section,
   High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.73900.
+1cc to Mr.C.Prabakaran, Advocate SR.No.73499.

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GJ(CO)
GN(08/02/2017)

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