

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.2869 of 2004

and

C.M.P.No.16412 of 2004

The Oriental Insurance Co. Ltd.,
Kamala Arcade, II Floor,
No.689, Anna Salai,
Chennai - 600 006.

... Appellant/R 2

Vs.

1.R.Bakthavatchalam
2.R.Kathiravan

... R 2/R 1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.12.2003 made in MCOP.No.697 of 1999 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.S.Janarthanam

For Respondents : No appearance

JUDGMENT

This appeal arises against the order passed in MCOP.No.697 of 1999 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. It is a case of an accident that had taken place as long back as on 17.08.1998 when a pedestrian was hit by a car bearing Registration No.TN07-Y-6319 belonging to the second respondent herein [first respondent before the Tribunal] and insured with the appellant. In the said accident, the claimant suffered fractures to his right wrist and for the injuries that he had sustained, has moved the Tribunal seeking compensation on various heads at Rs.1,00,000/-, against which, the Tribunal has passed an award for Rs.35,750/- payable with interest @ 9% per annum. Before the Tribunal, the appellant/Insurance Company had contended that the driver of the vehicle did not have a valid licence to drive a tourist car and it produced Ex.R3, copy of the driving licence which did not contain necessary endorsement for driving the tourist car and further contended that inasmuch as there is violation of policy condition, it was not liable. This was negatived by the Tribunal and it mulcted the liability on the appellant as it was required to indemnify the owner of the vehicle.

2. Before this Court, the learned counsel for the appellant submitted that inasmuch as the driver of the vehicle was proved not to have necessary badge or endorsement for driving the tourist car, there is violation of policy condition and as such, it shall not be fastened with liability. In this case, service of second respondent is not completed and the learned counsel also insisted that the second respondent be served with notice.

3. The accident had taken place some 28 years from now and the appeal which itself is 12 years old. Attempt to serve notice on second respondent, the owner of the vehicle has also failed as it was returned with the postal endorsement "no such person". Given the quantum of compensation awarded and the distant point of time at which the litigation is decided, there is no useful purpose in waiting to serve the second respondent. At any rate the owner of the vehicle remained ex parte.

4. On a perusal, the exhibits Ext.C1 and Ext.R3 both licence of the first respondent, driver of the vehicle at that relevant time, I am satisfied that there is no endorsement to drive the tourist cab and accordingly I hold that the case falls only within the violation contemplated under Section 149 of the Motor Vehicle Act and consequently appellant would be entitled to pay compensation at the first instance and then recover the same.

5. If the appellant has not already paid the compensation amount with accrued interest, the same shall be directed to be deposited within four weeks from the date of receipt of a copy of this order, whereupon the complainant would be entitled to receive the same forthwith. The Civil Miscellaneous Appeal is partly allowed without costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

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To

The IV Small Causes Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes No.IV,
Chennai.

+1cc to Mr.M.S.Krishnan, Advocate, S.R.No.73406

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