



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A(MD)No.13 of 2011

Koodal

.. Appellant/Respondent

-Vs-

Rukmani

..Respondent/ Appellant

Prayer:- Civil Miscellaneous Second Appeal filed under Section 28 of Hindou Marriage Act r/w 100 of the Code of Civil Procedure against the Judgment and Decree dated 10.11.2010 passed in H.M.C.M.A.No.2 of 2010 on the file of the learned Additional District Judge, (Fast Track Judge), Virudhunagar reversing the judgment and decretal order dated 08.07.2009 passed in H.M.O.P.No.73 of 2006 on the file of the Subordinate Judge, Virudhunagar.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.J.Alaguram Jothi

JUDGMENT

The learned counsel for the appellant filed a Memo dated 15.09.2016 stating that the sole respondent died on 25.04.2015 and hence, nothing survives in this appeal.

Recording the Memo dated 15.09.2016, the civil miscellaneous second appeal is closed. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



cla
To

1. The Additional District Judge,
(Fast Track Judge),
Virudhunagar

2. The Subordinate Judge,
Virudhunagar.

+2CC to Mr.S.Parthasarathy, Advocate Sr.No.69935

GJM/DB/8.12.16-2p-5C

C.M.S.A(MD) No.13 of 2011
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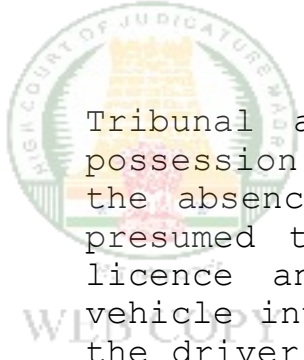
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C.M.S.A(MD)No.42 of 2010

16.11.2016

The facts in nutshell is that the accident took place at about 06.30 p.m. on 01.01.2005 at Singathakurichi - Kasilingapuram Main Road near Singathakurichi and it is a case of injury. The claimant filed M.C.O.P.No.339 of 2004 before the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court No.2, Tirunelveli, and considering the facts and circumstances, the Tribunal granted Rs.1,20,000/- with interest at 7.5% p.a. and costs.

3.The learned counsel appearing for the appellant Insurance Company, confined his argument to only one ground, namely, the driver of the vehicle involved in the accident was not in possession of driving licence to drive the two-wheeler. The



Tribunal also made a categorical finding that he was not in possession of effective driving licence to drive two-wheeler. In the absence of driving licence to drive two wheeler it is to be presumed that the vehicle was driven without any valid driving licence and there is a violation of policy condition of the vehicle involved in the accident. In view of the proved fact that the driver was not in possession of driving licence, the liability cannot be fixed on the appellant insurance company.

4. Evidence on record shows that the driver had no valid driving licence to drive the two wheeler, which is in violation of policy conditions. In respect of the liability of the appellant, this Hon'ble High Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and even if there is any violation of policy condition, in respect of the claim made by the third parties, the Insurance Company has to pay the award amount to the claimant at the first instance and thereafter, to recover the same from the owner of the vehicle.

5. On this aspect, in the judgment reported in **(2004)13 SCC 224** in the case of **Oriental Insurance Co. Ltd., vs. Nanjappan and others**, the Hon'ble Apex Court made the following observations:-

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal



of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

6. In view of the settled principles both by this Hon'ble Court and the Hon'ble Supreme Court of India, as this case is one of violation of policy conditions, this Court is inclined to consider the principle of Pay and Recovery.

7. In the case on hand, the Tribunal while awarding Rs.1,20,000/- together with interest at the rate of 7.5% p.a. directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle. Therefore, this Court finds no merit in the appeal and the award passed by the Tribunal in M.C.O.P.No.339 of 2005 dated 26.07.2007 on the file of Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court No.1, Tirunelveli is confirmed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions is also dismissed.

9. The learned counsel for the appellant/Insurance Company informed that the entire award amount has been deposited before the Tribunal and accordingly the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The 1st respondent/claimant is permitted to withdraw entire award amount with accrued interest and costs by making necessary applications before the Tribunal.

15.11.2016

Index : Yes/No

Internet : Yes/No

sj