

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2637 of 2016 & C.M.P.No.18806 of 2016

The Manager,
New India Assurance Co. Ltd.,
Motor Third Party Claims Cell,
No.45 Moore Street, Chennai 600 001 ... Appellant/2nd Respondent

...vs...

1. Tmt. Manjula1&2 Respondent/Petitioners
2. Tmt. Geetha @ Geethanjali
3. Thiru S.Srinivasa Moorthy ...3rd Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 05.04.2016 made in M.C.O.P.No.80 of 2015 on the file of the Motor Accident Claims Tribunal-I, Special District Judge, Tiruvallur.

For Appellant : Mr. G.Anandan
For Respondents 1 & 2 : Mr. G.Karthikeyan

JUDGMENT

It is a case, where the wife, who was a pillion rider at the time of accident succumbed to the injuries sustained in an accident and on account of her death, the claimants (daughters) have filed the Claim Petition, claiming compensation of Rs.5,00,000/-.

2. It is an admitted fact that, at the time of accident, the vehicle was driven by the husband of the deceased / father of the claimants.

3. The learned counsel appearing for the Insurance Company disputed the claim on the ground that the accident was not on account of negligence, but on account of "Act of God" and the Insurance Company is not liable to pay the compensation. The further contention of the Insurance Company was that the driver, at the time of accident, was not having a valid and effective driving licence and on this ground also, the Insurance Company is not liable to pay compensation.

4. The Tribunal, after consideration of the oral and documentary evidence adduced before it, while awarding the compensation as against the Insurance Company, has given a finding that the Insurance Company did not discharge its burden of proving that the driver of the first respondent was not having any valid and effective driving licence. Challenging the same, the Insurance Company has filed this Appeal.

5. The learned counsel for the Appellant / Insurance Company would point out that this case stands on a different footing inasmuch as the deceased died on account of the rash and negligent driving on the part of her husband, therefore, the claimants could have been in a position to produce the driving licence, if really the driver had been in possession of the same. It is also pointed out that there is a charge under Section 304 A IPC read with Section 184 (3) read with Section 181 of the Motor Vehicles Act.

5.1. Section 181 of the Motor Vehicles Act is a section dealing with driving vehicle in contravention of Section 3 or Section 4 of the Motor Vehicles Act. Section 3 of the said Act deals with necessity for driving licence and section 4 deals with age limit in connection with driving of motor Vehicles. Sections 3 and 4 of Act reads thus:-

"3. Necessity for driving license -

(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle (other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75) unless his driving license specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

4. Age limit in connection with driving of motor vehicles -

(1) No person under the age of eighteen year shall drive a motor vehicle in any public place.

Provided that 2[a motor cycle with engine capacity not exceeding 50 cc] may be driven in a public place by a person after attaining the age of sixteen years.

2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's license or driving license shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

5.2. Ex.P-6 is the charge sheet that has been filed before the Claims Tribunal. The Tribunal did not consider the charges levelled against the driver of the vehicle at the time of accident. In such circumstances, the Tribunal should have ordered pay and recovery with a direction to the Insurance Company to recover the amount from the owner of the vehicle.

6. The learned counsel for the appellants, by relying upon the decision, in the case of Oriental Insurance Co. Ltd., v. B.S.Jothi in CMA (MD) No.1288 of 2012, stated that, when there is a violation of policy condition by the Insured, it is proper for the Tribunal to direct the Insurer to pay and recover.

7. All the facts narrated above would go to show that the driver of the vehicle did not possess a valid and effective driving licence, at the time of accident. For non production of the same, the Tribunal should have drawn adverse inference. Therefore, it is a case, where pay and recovery should have been ordered.

8. In the result, this Civil Miscellaneous Appeal is allowed and the Insurance Company shall pay the compensation to the claimants and it is at liberty to recover the compensation from the owner of the vehicle.

9. There is an undertaking on the part of the learned counsel appearing for the Insurance Company that the amount, as awarded by the Claims Tribunal, would be deposited within a period of four weeks from the date of receipt of a copy of this judgment.

9.1. The said statement is recorded.

9.2. No costs. Consequently, the connected CMP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

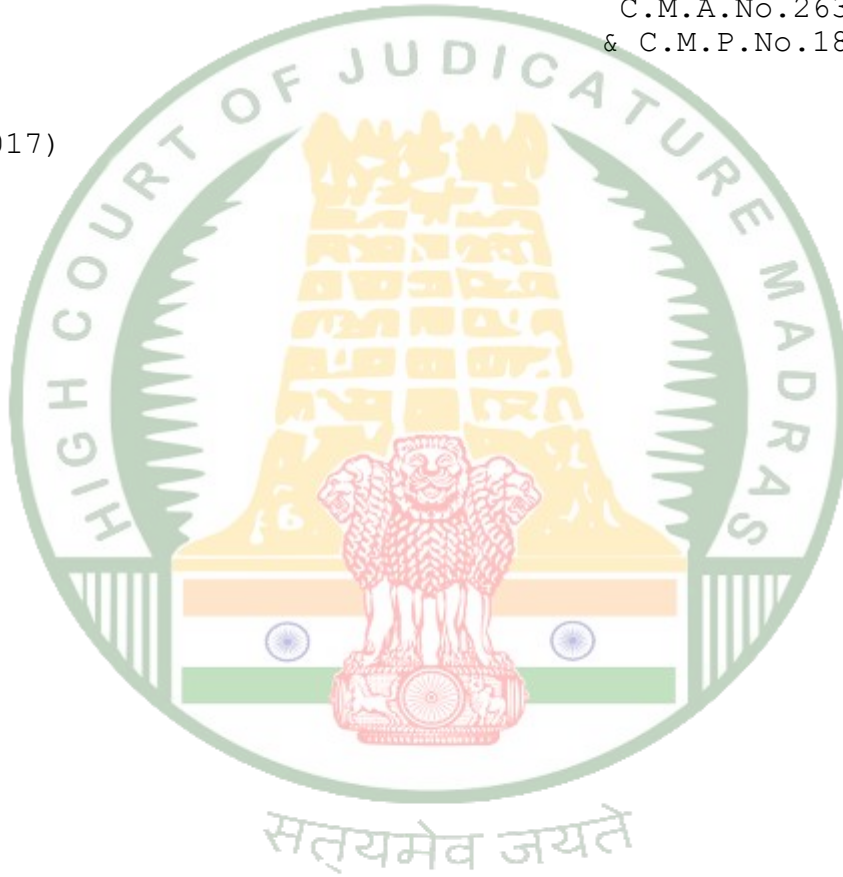
1. Motor Accident Claims Tribunal-I,
Special District Judge, Tiruvallur.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+lcc to Mr.G. Anandan, Advocate Sr. 3736

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