

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.539 of 2011

1.Manjula
2.Pappammal

... Appellants/Claimants

Vs.

1.L.Gopal Reddy
2.The Divisional Manager
National Insurance Company Limited,
Divisional Office,
Officers Line, Vellore-1.

3.S.Karthi ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.11.2010 made in MCOP.No.10 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Track Court), Vellore.

For Appellants :Mr.C.Prabakaran

For Respondents :Mr.S.Vadivel [for R2]

JUDGMENT

The claimants before the Tribunal have come forward with this appeal challenging that part of the award where the Tribunal had exonerated the Insurance Company from meeting the liability arising out of the accident that took place on 10.01.2005.

2. A cyclist was hit by a lorry bearing registration No.AP 26 T 2571 and he died on the way to hospital. The legal representatives of the victim have preferred a claim of Rs.6,00,000/- before the MACT and the Tribunal had passed an award for Rs.5,36,000/-. Before the Tribunal the second respondent took up a contention that the lorry at that relevant time was without permit and this fact the Tribunal finds it as proved. The owner of the lorry too remained exparte. In this circumstances, Tribunal has held that the Insurance Company is

not liable as there was no valid permit for plying the lorry in a public place. Use of a motor vehicle in public place without permit where it is required is only a violation of policy condition that it falls within Sec.149 of the Motor Vehicle Act and consequently it is a case where doctrine of "pay and recover" is required to be applied, and accordingly Insurance Company should meet the liability at first instance.

3. In the result, the appeal is allowed and the second respondent is directed to meet the liability arising out of the award passed by the Tribunal at the first instance and then to realise the same from the owner of the vehicle in the same proceedings. The said sum shall be deposited within four weeks from the date of receipt of a copy of this order with interest @ 7.5% per annum and the claimants can withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court, Vellore.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate Sr.8768
+1cc to Mr.S.Vadivel, Advocate Sr.9071

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