IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.856 to 859 and 895 of 2017

The New India Assurance Co. Ltd.,
Vasavi Building, Big Street,
Tiruvannamalai. ... Appellant in all C.M.As./
3rd respondent

Versus

1. M.Elango … 1st respondent in C.M.A.No.856/17/
Petitioner

2. Minor Praveen
Rep. by his mother and
next friend Kumudha … 1st respondent in C.M.A.No.857/17/
Petitioner

3. Minor Chithranjan
Rep. by his mother and
next friend Sakthi … 1st respondent in C.M.A.No.858/17/
Petitioner

4. Minor Pravesh
Rep. by his mother and
next friend Kumudha … 1st respondent in C.M.A.No.859/17/
Petitioner

5. Minor Sivaranjan
Rep. by his mother and
next friend Sakthi … 1st respondent in C.M.A.No.895/17/
Petitioner

2. Karthick … 2nd respondent in all C.M.As.
3. Ashokkumar … 3rd respondent in all C.M.As./
1st & 2nd Respondent

Prayer : These appeals filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 03.03.2011 made in M.C.O.P.Nos.337 and 362 to 365 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tirupattur.

For Appellant: Mr.M.Krishnamoorthy in all CMAs

COMMON JUDGMENT

The Insurance Company has filed these appeals challenging the order of the Tribunal directing the Insurance company to pay the compensation and thereafter recover the same from the owner of the vehicle.

2. It is the contention of the learned counsel appearing for the appellant in all these cases that the Tribunal should have completely exonerated the Insurance Company from the liability on the ground that the driver did not have a effective and valid driving licence.

3. A perusal of the order of the Tribunal reveals that it was the contention of the claimants that the vehicle involved in the accident is insured with the Insurance Company, therefore, the Insurance Company is liable to pay the compensation. To substantiate their case, the insurance policy has been marked as Ex.P19.

4. It was the contention of the Insurance Company that the driver of the vehicle was not holding a valid and effective driving licence. In order to prove the same, one Kamalakannan, Junior Assistant, Regional Transport Officer, Vaniyampadi, was examined as R.W.2, wherein, he deposed that on verifying the registers and the data, it is seen that the driver was not issued with a valid and effective driving licence. The report was marked as Ex.R1. Considering the evidence of R.W.1 and Ex.R1, the Tribunal has given a finding that it clearly shows that the driver was not issued with a valid and effective driving licence.

5. However, the Tribunal has further went on to hold that though there is violation of policy conditions, the claimants being third parties, the Insurance Company could not be absolved of its liability and that the Insurance Company could pay the compensation to the claimants and recover the same from the owner of the vehicle. Relying upon the decision of this Court in United India Insurance Company Ltd. & Anr. vs. S.Sarvanan & Ors. (CMA No.3363/2008 - Dt. 12.06.2009), the Tribunal directed the insurer to pay the compensation and recover the same from the owner of the vehicle.

6. A careful perusal of the order passed by the Tribunal reveals that the Tribunal has recorded a finding that the claimants are third parties. The Tribunal has also rendered a finding, based on the documents available on record, that it is not a case of the driver having no licence. The Tribunal has

rendered a finding that though the driver was in possession of a licence, however the said driving licence was not valid and effective on the date of the accident. Considering the evidence of R.W.2 coupled with Ex.R-1, Motor Vehicles Inspector's Report, the Tribunal has come to the conclusion that the driver of the vehicle was not possessed of a valid and effective driving licence on the date of the accident. However, the Tribunal has rendered a finding that it is not a case of the driver of the vehicle not at all having a driving a licence, but it is only a case, where the licence was not valid on the date of the accident. In such view of the matter, the Tribunal has directed the insurer to pay the compensation to the claimants and to recover the same from the owner of the vehicle. The above order passed by the Tribunal cannot be said to be perverse or unsustainable. On considering the oral and documentary evidence and also relying upon the decision of this Court, the Tribunal has come to the conclusion and rightly ordered the insurer to pay the amount and recover the same from the owner of the vehicle. Accordingly, the order passed by the Tribunal is liable to be sustained.

7. In view of the above, the Civil Miscellaneous Appeals are dismissed, confirming the Judgment and Decree dated 03.03.2011 made in M.C.O.P.Nos.337 and 362 to 365 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Tirupattur.

8. The Insurance Company is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made the Tribunal is directed to transfer the amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter. The share of the minor claimants shall be kept in deposit till they attain majority and the interest accrued shall be withdrawn by the guardian once in three months.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

The Motor Accident Claims Tribunal
(Subordinate Judge), Tirupattur.

C.M.A.Nos.856 to 859 and 895 of 2017

GJII(CO)
EU(02/04/2018)