

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.2342 of 2017
(C.M.A. SR. No.41733 of 2005)
and
C.M.P. No.12608 of 2017

The New India Assurance Company Ltd.,
 No.80-D, Mundu Street, II Floor,
 Vellore – 4. ... Appellant

Versus

1. S.Samundeeswari
 2. Venkatesan
 3. Lakshmi
 4. P.M.Marimuthu
 5. M.David ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 07.12.2004 made in M.A.C.T.O.P. No.149 of 2002 on the file of Motor Accident Claims Tribunal, (Fast Track Court No.II, Ranipet, Additional District and Sessions Judge), Ranipet – Vellore District. **(transferred) to vellore**

For Appellant : Ms.P.G.P. Padmanabhan

JUDGMENT

The insurance company has filed this appeal, challenging the liability to pay compensation on the ground that the Driver did not have the driving licence at all.

2. The legal representatives of the deceased Ramaswamy Pillai filed the claim petition before the Motor Accidents Claims Tribunal at Ranipet in O.P. No.280 of 1994 making a claim of Rs.1,00,000/- in respect of the **accident that took place on 24.04.1994**. The deceased was a person aged 57 years, milk vendor and agriculturist by profession earning a sum of Rs.3,000/-p.m.

3. According to the claimants, the deceased was a pedestrian at the time of accident. The insurance company disputed the liability on the ground that the Driver did not hold valid driving licence and he was not authorised to drive the vehicle which involved in the accident and therefore, the insurance company is not liable. The claims Tribunal on a consideration of materials placed before it, awarded a sum of Rs.27,000/- as compensation, with a direction to the appellant insurance company to pay the compensation.

4. The learned counsel for the appellant would submit that the insurance company should have been exonerated from the liability to pay the compensation; that the award itself is excessive and even assuming that it is reasonable, the owner alone would have been directed to pay the

compensation and not the insurance company, as the Driver did not have the driving licence at all.

5. In order to appreciate the contentions raised, it is necessary to find out the details of the reasonings given by the claims Tribunal while making the insurance company liable to pay the compensation.

6. The appellant / insurance company has examined the Development Officer Kesavan as its witness. According to the evidence, the insurance company has written a letter to the owner of the vehicle asking for details of accident and the particulars with regard to the vehicle, which was marked as Ex.R1. The letter got returned with the endorsement "unclaimed". The returned letters are marked as Exs.R2 and R3. The insurance company has also relied upon Ex.R4, the report of the investigator of the insurance company, who would state that the Driver did not possess the driving licence. Based on these materials, the insurance company wanted to exonerate itself from the liability to pay the compensation. The Tribunal has discussed the above evidence and however, has directed the insurance company to pay the compensation. This finding is under challenge.

7. The learned counsel reiterated the grounds of appeal that are raised in this case and it is also pointed out that the Tribunal has given a specific finding that there is no driving licence and hence it is a case for exoneration from the liability. It is true that there is such a finding in paragraph 10 of the order passed by the Tribunal. But the details of evidence discussed would go to show that the insurance company has relied upon only the evidence of their own investigating officer not even the independent Investigating Officer of the police department, who investigated the incident under a statute.

8. As the insurance company has taken a specific plea that the Driver was not having valid licence and hence, there was breach of insurance policy, the burden obviously was on the insurance company to prove that the driver does not have valid licence. Appellant Insurance company should have discharged that burden by carrying out necessary investigations and inquiries with the concerned R.T.O. and it cannot be done on the basis of some letter issued by private investigators report. Hence, this Court hold that the defence taken by the insurance company that the Driver did not possess valid driving licence has not been proved.

9. It would be appropriate to consider some of the decided cases of the Hon'ble Supreme Court, which is relied upon by the Delhi High Court the following decisions have been quoted :

Law is settled on the issue of no licence, fake licence or invalid driving licence. The following are the relevant case laws

a. New India Insurance Company Ltd. v. Darshana Devi
2008 ACJ 1388.

The offending vehicle at the time of accident was being driven by son of the owner of the vehicle, who was not holding any licence to drive the same. Id. Tribunal, while awarding the compensation held that the amount shall be payable by the insurer initially, however, the insurer will be at liberty to recover the same from the owner of the offending vehicle. The award passed by Id. Tribunal was challenged by the Insurance Company, same was affirmed by the High Court and also upheld by the Supreme Court.

b. In New India Assurance Co. Ltd. v. Kamla and Ors. etc.
2001 ACJ 843, wherein it is held as under:

"The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.."

c. *National Insurance Co. Ltd. v. Swarn Singh*, 2004 ACJ 1 :

“(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section

149, have to be proved to have been committed by the insured for avoiding

liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

d. *V. Mepheron vs. Shiv Charan Singh* [1998 ACJ 601(Del.)], the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.”

e. In *Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.*, 2012, ACJ, 1268,

“44. (ii) Even when there is a willful breach of the terms of the policy under Section 149 (2) (a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires

the owner and driver to produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void under Section 149 (2) (b) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is non est."

10. The amount of compensation is also a meager amount that is awarded in respect of an accident that took place in the year 1994 and at this distant point of time, where notice itself is not served on any of the respondents, it is not proper and appropriate on the part of this Court to set aside the findings given by the claims Tribunal and therefore, the appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

11. The police official, who investigated the accident, ought to have been examined to speak about the nature of driving licence or no licence on the part of the Driver or else the concerned R.T.O. should have

been examined to find out whether the Driver had valid driving licence or not. In the absence of burden of proof, being discharged, the final direction by the claims Tribunal directing the insurance company to pay the compensation, has to be upheld.

12. The appellant /Insurance Company is directed to deposit the entire award amount along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any before the Tribunal, 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 award amount directly to the bank account of the claimant, through RTGS within a period of two weeks thereafter.

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Index : Yes / No
Internet : Yes / No
Speaking/Non speaking
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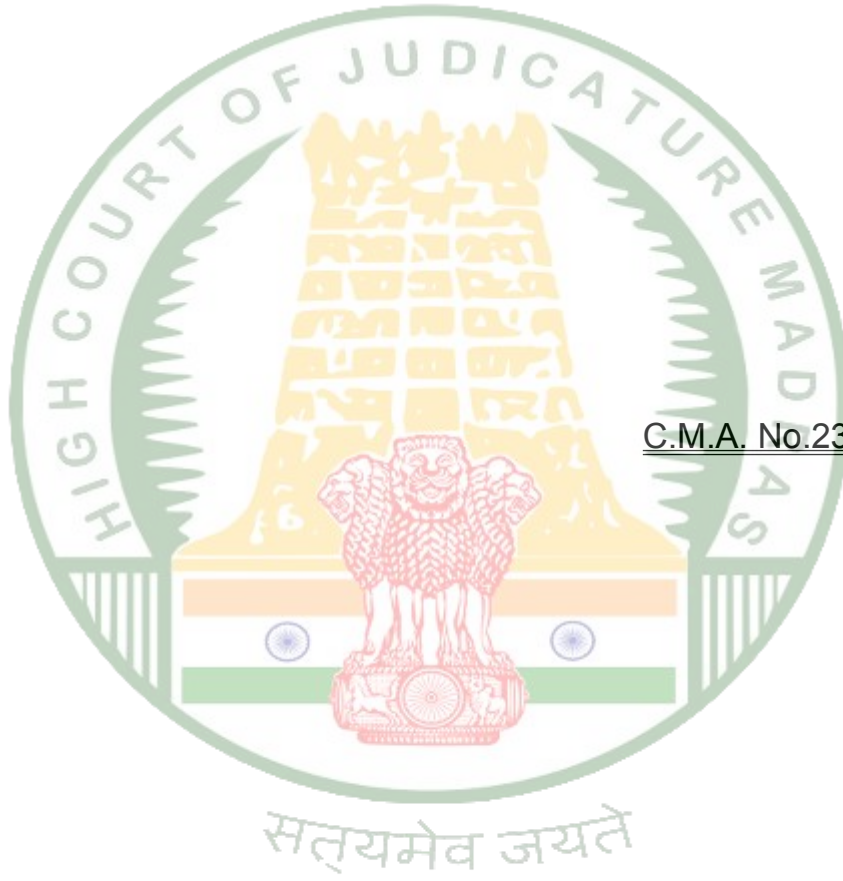
To

1. Motor Accident Claims Tribunal,
(Fast Track Court No.II, Ranipet,
Additional District and Sessions Judge), Ranipet – Vellore District.

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

Dr.S.VIMALA, J.

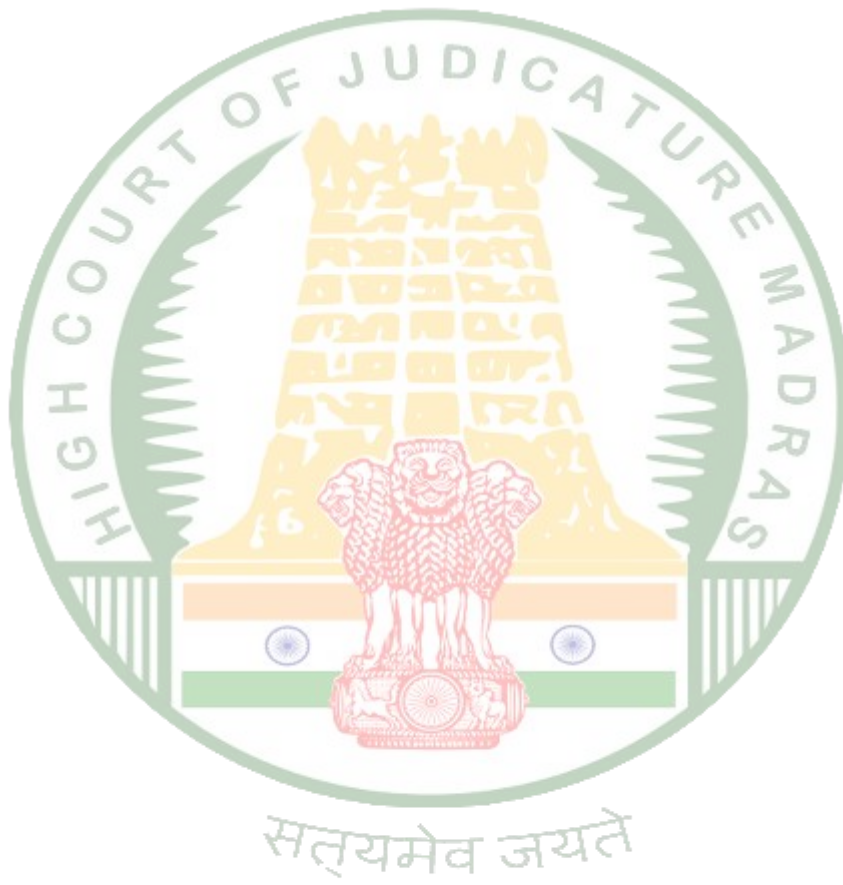
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