



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 16.11.2017  
CORAM  
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A.(MD).No.44 of 2016  
and  
C.M.P.(MD).No.704 of 2016

The Branch Manager  
New India Assurance Co. Ltd.,  
ML Complex,  
1<sup>st</sup> Floor, No.10/11, Church Road,  
Dharapuram.

... Appellant/2<sup>nd</sup> respondent

Vs

1.M.Sellammal

2.S.Lakshmi

3.M.Dhandapani

... Respondents 1-3/Petitioners

4.M.Selvaraju

... 4<sup>th</sup> Respondent / 1<sup>st</sup> Respondent

5.P.Masanam

... 5<sup>th</sup> Respondent / 3<sup>rd</sup> Respondent

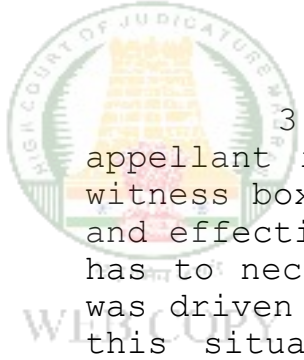
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, to set aside the fair and decretal order dated 19.11.2014 made in M.C.O.P.No.198 of 2012 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur.

|               |                         |
|---------------|-------------------------|
| For Appellant | : Mrs.P.Malini          |
| For R.2 & R.3 | : Mr.N.Sudhagar Nagaraj |
| For R.4 & R.5 | : No appearance         |

J U D G M E N T

The insurance company is on appeal challenging the impugned award on the ground of liability. One Muthusamy was killed in an accident that took place on 10.04.2012. The offending lorry, belonging to one Selvaraju, was insured with the appellant insurance company. The legal heirs of the deceased filed M.C.O.P.No.198 of 2012, before the Motor Accident Claims Tribunal/Principal District Judge, Karur, claiming compensation.

2. The appellant insurance company took all possible steps to find out whether the driver of the offending lorry was possessing a valid and effective driving licence. The owner of the vehicle remained ex parte. The appellant insurance company had written a letter to the vehicle owner asking him to produce a copy of the driving licence. The said letter was returned un-served. The Regional Transport Officer, Ramanathapuram also expressed his inability.



3. In these circumstances, nothing more can be done by the appellant insurance company. It is for the owner to get into the witness box and show that the driver engaged by him was having valid and effective driving licence. Since he has not done so, this Court has to necessarily come to the conclusion that the offending lorry was driven by a person who did not have a valid driving licence. In this situation, breach of the insurance policy condition stands established. Therefore, pay and recovery principle has to be applied. The insurance company shall satisfy the impugned award. Thereafter, it can be recovered from the vehicle owner.

4. It is submitted by the learned counsel appearing for the respondents 2 to 3 that the first respondent passed away. However, the other legal heirs are on record.

5. Accordingly, the award dated 19.11.2014 made in M.C.O.P.No.198 of 2012 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur is modified as indicated above. The appellant is liable to pay the entire compensation award with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of eight weeks from the date of receipt of a copy of this order, and thereafter recover the paid amount from the vehicle owner in this very proceeding by filing an execution petition. On such deposit, the claimants/legal heirs are entitled to withdraw the same as apportioned by the Tribunal, by filing proper application.

6. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,  
Motor Accident Claims Tribunal, Karur.
2. The Record Keeper,  
Madurai Bench of Madras High Court,  
Madurai. **(Two Copies)**

+1cc to M/S.P.Malini, Advocate SR.No. 87758

+1cc to M/S.N.Sudhagar Nagaraj, Advocate SR.No. 87793

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and

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