



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.790 of 2016

and

CMP (MD) No.7645 of 2016

The Branch Manager,
The National Insurance Company Ltd,
Hero Honda Vertical,
No.101, 106 BMC House,
N 1, Connaught Place,
New Delhi - 110 001.

... Appellant

Vs.

1.Chitra

2.Saravanan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree dated 15.12.2015 made in MCOP.No.185 of 2013 on the file of Principal Subordinate Judge, Karur.

For Appellant : Mr.A.Ilango

For Respondents : Mr.S.Deenadhayalan for R1
Mr.K.Suresh Kumar for R2

JUDGMENT

The insurance company has filed this appeal questioning the award on the ground of liability.

2.The Tribunal awarded a sum of Rs.1,29,128/- with interest to the claimants. According to the learned counsel appearing for the appellant, the vehicle was ridden by a person who did not possess a valid effective driving licence at the time of accident. Therefore, there has been a breach of policy condition. The Tribunal ought to have applied the principle of pay and recover. In this case, not doing so is clearly erroneous.

3.I find force in the said submission. When it is seen that the offending vehicle driven by a person who did not have a valid driving licence, the insurance company of course must satisfy the award in the first instance. Then, it must be permitted to recover the paid amount from the vehicle owner by filing execution petition in this very proceedings.



4.I therefore modify the award dated 15.12.2015 made in MCOP.No.185 of 2013 on the file of Principal Subordinate Judge, Karur by applying pay and recover principle.

5.The appellant insurance company is directed to deposit a sum of Rs.1,29,128/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any, and thereafter, recover the paid amount from the vehicle owner by filing execution petition in this very proceedings, before the Tribunal. On deposit by the appellant, the claimant is entitled to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by her, if any.

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

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Karur.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.Elango, Advocate sr.No.88762

+1cc to Mr. S.Deenadhayan, Advocate Sr.No.88828

SKM

VB/SV/MMS/SAR4/21/12/2017/2P/5C

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