IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.12.2018
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3369 of 2006
and M.P.No.1 of 2006

National Insurance Co. Ltd.,
37/2E, Salem Main Road,
Mettur Dam R.S.,
Salem District. ... Appellant

..Vs..

1.Thangayal
2.Palanisamy
3.R.Ranganathan
4.K.Govindan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.03.2005 made in M.C.O.P.No.5 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Bhavani.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.Pa.Thangavel for R1

JUDGMENT

The appellant the National Insurance Company Limited filed this appeal against the orders passed by the Motor Accidents Claims Tribunal, Sub Judge, Bhavani.

2.Mr.S.Arun Kumar, the learned counsel appearing for the appellant would contend that though the Tribunal had found that the driver of the heavy motor vehicle namely the lorry bearing Registration No. TCE 6135 did not have a valid driving licence did not adopt the recourse to pay and recovery as per settled position of law.

3.A perusal of the records shows that in paragraph no.12 of the orders dated 24.03.2005 passed by the learned Motor Accidents Claims Tribunal, Sub Judge, Bhavani, the Tribunal has directed the Insurance Company as well as the owner of the Lorry bearing Registration No. TCE 6135 to pay a sum of Rs.4,19,000/- together with interest at the rate of 9% p.a to the respondents 1 and 2/claimants jointly and severally for the death of one Appusamy who was aged 54 years. The tribunal based on evidence has clearly concluded that the driver of the offending vehicle, on the date of accident did not have a valid driving licence.

This finding of the tribunal is perfectly right as sufficient evidence was adduced by the appellant / Insurance Company to substantiate their contention in this regard.

In National Insurance Co. Ltd., -vs- Swaran Singh and others, 2004(1) TN MAC 104 (SC) : 2004(3) SCC 297, it has been observed thus:

> "(iii) The breach of Policy condition e.g. disqualification of the Driver or invalid driving Licence of the Driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licensed Driver or one who was not disqualified to drive at the relevant time."

This decision has been followed in S.S.Murthy and another reported in 2017(1) TN MAC 737 (SC). Applying the said principles, the Insurance Company after paying the award amount can recover the same from the owner of the vehicle namely the second respondent herein in the same proceedings.

4.As far as the quantum of compensation of Rs.4,19,000/-, no arguments were advanced on both sides. In fact no cross objections appeal is filed by the respondents 1 and 2/claimants in the instant case.

5.With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rna

To

The Subordinate Judge,
Bhavani.

+1 cc to Mr.S.Arunkumar, Advocate, Sr.No. 87017
+1 cc to Mr.Ma.P.Thangavel, Advocate, Sr.No. 86971

C.M.A.No.3369 of 2006
and M.P.No.1 of 2006

SPD(CO)
CSL/09.05.2019