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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.685 of 2011

The New India Assurance Co Ltd
Rep by its Branch Manager
Trichy Appellant/2nd Respondent

Vs

1. Nancy,
   Represented by her next friend
   Father Dhanraj
   Nagapattinam Dist Respondent / Petitioner

2. Boopathi S/o Rajagopal
   Door No.1/1102-A
   Pallathupatti Village
   Pudukottai Dist Respondent /1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.11.2010 made in MCOP No.103 of 2009 on the file of Motor Accidents Claims Tribunal /Chief Judicial Magistrate, Nagapattinam.

For Appellant	:	Ms. Salomi
For Respondents	:	Mr. A.E. Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Appellant/ Insurance Company challenging the Judgment and degree dated 24.11.2010 passed by the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Nagapattinam. In the Claim Tribunal, the 1st respondent in this appeal is the claimant and the 2nd respondent is the 1st respondent, who is the owner of the offending vehicle. Further, the appellant herein is the 2nd respondent/insurer. For the sake of convenience, the parties are referred to as per their status before the Tribunal. This is the case of injury.

2) In the claim Tribunal, the case of the petitioner is as follows.

2.1. On 03.08.2008 at about 5.00 pm, when the injured was riding the Bicycle in east west road near Old Matha Theatre, a Car bearing Reg.No.TN 55 R 2562 owned by the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and hit against the claimant. Due to the said accident the petitioner sustained multiple fractures all over the body. She sustained fracture on her left foot, right hand and stomach. After the accident, she was admitted in Government Hospital, Nagapattinam and thereafter she took further treatment from 03.08.2008 to 25.08.2008 as inpatient at Thanjavur Medical College Hospital. During the time of the treatment, an operation was performed in her left leg. At the time of accident, she studied 12th standard and her age was 17 years. In the claim Tribunal, on behalf of the injured claim application was filed by her father and prayed for the compensation of Rs.10,00,000/- towards injuries sustained by the petitioner in the accident.

3) On the other hand, opposing the claim of the petitioner by filing the counter, the 2nd respondent Insurance Company denied the accident and contended that the accident was happened only due to the rash and negligent act of the injured. It was further contended on the side of the Insurance Company that during the time of accident, the driver of the 1st respondent vehicle is not possessed with valid Driving License and thereby the 2nd respondent is not liable to pay any compensation to the injured. Before the Tribunal, the petitioner was examined as PW 1, the doctor who issued the Disability Certificate to the petitioner was examined as PW 2. Further on the side of the petitioner, 19 documents were exhibted as Ex.P.1 to Ex.P.19.

4) On the side of the 2nd respondent, one Raju, who is the Investigating Officer in the 2nd respondent Insurance Company was examined as RW1. Further one Ganapathi Subramanian, Administrative Officer of the Insurance Company was examined as RW2. Apart from that, 4 documents are exhibited as Ex.R.1 to Ex.R.4. The Claim Tribunal on the basis of the available evidence came to the conclusion and found that the 1st respondent Car driver alone drove the vehicle in a rash and negligent manner and committed the occurence. Finally passed the award to a sum of Rs.2,13,500/- as a compensation to the injured petitioner Nancy and directed the appellant to pay the the compensation to the injured along with interest. Aggrieved over the said findings, the 2nd respondent Insurance Company has come forward with this present appeal.

5) Today, when the appeal is taken up for consideration, the learned Counsel appearing for the appellant as well as the respondent are present. The only grievance raised by the appellant's Counsel is that the Claim Tribunal without

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noticing the fact that the Driver of the Car is not possessed with the valid Driving License passed an award directing the 2nd respondent to pay the entire amount. In otherwise in respect to the quantum , she has not disputed the amount of compensation arrived by the Claim Tribunal.

6) In the said circumstances, it is necessary to identify whether the 2nd respondent is liable to pay the entire award amount as directed by the Claim Tribunal or not. In this respect in the claim Tribunal, the witnesses examined on the side of the Insurance Company as RW 1 and RW 2 have clearly stated that the driver of the Car Dinesh has not possessed with the valid Driving License. In this aspect, Officer from the RTO Office is not examined, even though nobody was examined from the office of the RTO. The evidence given by RW 1 and RW 2 discloses that after the occurrence, they made an effective steps and sent a letter to the 1st respondent for his appearance and for the production of the Driving License related to the Car bearing Reg.No.TN 55 R 2562. Notice issued by the Insurance Company was acknowledged by the 1st respondent through the acknowledgment card under Ex.R3 and Ex.R4. Even after receiving the notice given by the Insurance Company, he has not appeared and produce the documents, which are all necessary for settling the claim in this case. It presumes and establishes that the driver of the said vehicle is not having any valid Driving License. If really, the driver is having a valid Driving License, there is no difficulty in producing the same before the Insurance office after receiving notice sent by the Insurance Company.

7) Accordingly, I am of the opinion that only because of the reason that the Driver is not possessed with the Valid Driving License, the respondent is not appeared before the Insurance Company and produce the documents required by the Insurance Company. However, in the said situation, it is necessary to see the Judgment reported in 2013 (2) TNMAC 535 of this Court, in which this Court ordered the Insurance Company to pay the compensation to the Claimant and recover the same from the owner of the vehicle without filing any formal application. Also, on the side of the Insurance Company, they have not disputed the Insurance Policy related to the Car. Accordingly, during the time of accident, the owner of the vehicle alone violated the policy. So this Court is necessarily to follow the principle laid down in the above Judgment. Therefore, this Court modified the order passed by the claim Tribunal as the Insurance company is directed to pay the entire Compensation along with the interest as arrived by the claim Tribunal to the claimant and further it is ordered that the Insurance Company is having a liberty to recover the said amount from the 2nd respondent, without filing any formal application.

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In the result, the appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vrn

To

The Motor Accidents claims Tribunal/
Chief Judicial Magistrate
Nagapattinam

Copy to

The Section Officer
VR Secion
High Court
Madras

+1cc to Mr.C.Ramesh, Advocate sr.no.61108
+1cc to Mr. A.E. Ravichandran, Advocate sr.no.61514

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