

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.1704 & 1705 of 2013
and
MP.Nos.1 and 1 of 2013

The Oriental Insurance Co. Ltd.,
Branch Office, 3-L,
Siddha Veerappa Chetti Street,
Dharmapuri Town & Taluk &
District.Appellant in all CMAs/2nd Respondent

vs.

1.Thirumathi Kalaiyarasi ...Ist Respondent/Petitioner
2.R.Senthil ... Respondents in CMA No.1704 of
2013/Respondent

1.Dharman alias Dharmalingam ... Ist Respondent/Petitioner
2.R.Senthil ... Respondents in CMA No.1705 of 2013

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.10.2011 passed in MCOP.Nos.626 of 2009 and 627 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy
(in both CMAs)

For Respondents : Mr.C.Prabhakaran for R1
(in both CMAs) No appearance for R2

COMMON JUDGMENT

The Oriental Insurance Company, the second respondent in MCOP.Nos. 626 of 2009 and 627 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Dharmapuri has filed the present appeals questioning their liability to pay compensation to the claimants, on the ground that the rider of the motorcycle bearing Registration No. TN 29 AC 1869 was not in

possession of a valid driving licence on the date of the accident.

2. The claimants filed the respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident on 23.11.2008.

3. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeals would also be indicated.

4. The case of the claimants is that on 23.11.2008, they were travelling in a TVS XL motorcycle bearing Registration No. TN 29 AC 7657 on Pennagaram - Dharmapuri main road, near Jayam College and at about 06.30 pm, a speeding Bajaj Platina motorcycle bearing Registration No. TN 29 AC 1869, hit the motorcycle in which the claimants were travelling, as a result of which, they sustained grievous injuries. According to the claimants, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 29 AC 1869 belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the Oriental Insurance Company, the owner and the insurer are jointly and severally liable to compensation.

5. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Dharmapuri after analysing the evidence on record, awarded compensation of Rs.10,000/- and Rs.2,47,310/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.Nos.626 of 2009 and 627 of 2009 respectively. The Tribunal further concluded that the liability of the Oriental Insurance Company and the owner of the motorcycle bearing Registration No. TN 29 AC 1869 is joint and several. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

6. Mr.M.Krishnamoorthy, learned counsel appearing for the Oriental Insurance Company contended that though the Tribunal has come to a conclusion that the rider of the motorcycle bearing Registration No. TN 29 AC 1869 was not in possession of a valid driving licence on the date of the accident, did not give liberty to the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle. He therefore, prayed for setting aside the orders passed by the Tribunal.

7. Heard Mr.C.Prabhakaran, learned counsel appearing for the first respondent. No appearance for the second respondent.

8. A perusal of the entire records shows that though it is contended by the Insurance Company that the rider of the offending vehicle was not in possession of a valid driving licence, no acceptable evidence was adduced by them. In fact, no notice either to the rider or the owner of the offending vehicle was issued by the Insurance Company requesting them to produce the driving licence. The evidence of RW2 and RW3 are not sufficient to hold that the rider of the offending vehicle was not in possession of a valid driving licence on the date of the accident. Jayakodi (RW3), who is working as a typist in Regional Transport Office had clearly deposed that they cannot find out from the available data in the computer as to whether the rider of the offending vehicle was in possession of a valid driving licence on the date of accident. In the facts and circumstances, the finding of the Tribunal that the rider of the motorcycle bearing Registration No. TN 29 AC 1869 was not in possession of a valid driving licence on the date of the accident cannot be sustained. However, the Tribunal was right in directing the owner of the motorcycle bearing Registration No. TN 29 AC 1869 and the Insurer, the Oriental Insurance Company to pay the compensation amount to the claimants jointly and severally.

9. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The orders passed by the Tribunal is upheld.

Sd/-

सत्यमेव जयते
Assistant Registrar

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Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Dharmapuri.

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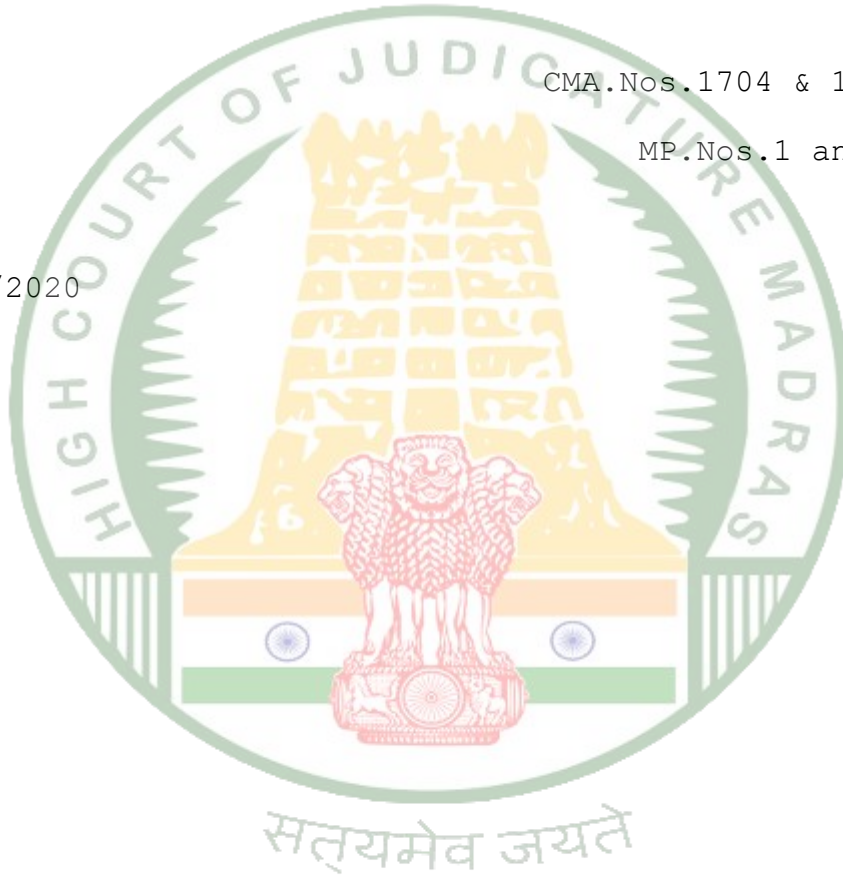
The Section Officer,
VR Section,
High Court of Madras,
Chennai.

+lcc to Mr.C.Prabakaran, Advocate Sr.95652

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