

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.716 of 2011

and

M.P.No.1 of 2011

M/s.National Insurance Company Ltd.,
Door No.16, State Bank Road,
Post Box No.3928,
Coimbatore-18

... Appellant/3rd Respondent

Vs.

1.M.Banumathi ... 1st Respondent/Petitioner

2.Kumaraswamy ...2nd Respondent/1st Respondent

3.Vadivel ...3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.12.2010 made in M.C.O.P.No.1042 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge/Fast Track Court No.3), Coimbatore.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.B.Nedunchezian

JUDGMENT

The Insurance Company is the appellant herein.

2. The first respondent herein has filed the M.C.O.P.No.1042 of 2008 before the Motor Accidents Claims Tribunal (Fast Track Court No.3), Coimbatore seeking compensation for the injury sustained by him in the accident.

3. The learned counsel for the appellant-Insurance Company has submitted that pay and recovery ought to have been ordered in the absence of any valid driving license provided by the first respondent before the tribunal.

4. After going through the records, it is seen that P.W.1-Banumathi examined herself and produced Exhibit P1 F.I.R, Exhibit P2 Medical Certificate, Exhibit P3 discharge summary and Exhibit P4 C.T. Scan Report. Accordingly, the compensation of sum of Rs.49,500/- has been ordered along with interest.

5. The learned counsel for the appellant-Insurance Company has contented that the trial Court has not been considered or adjudicated, upon liability of the Insurance Company especially when a specific plea has been raised that the driver of the offending vehicle does not possess valid license at the time of the accident.

6. This Court has given its anxious consideration to the fact that the driver of the vehicle was arrayed as R1 and the owner was arrayed as R2. However, the appellant-Insurance Company has not projected its case properly before the trial Court to show that the driver does not possess any driving license and to police records have been marked in this behalf. Having failed to probablize the defense theory, this Court has unable to uphold the contention of the Insurance Company.

7. In view of this matter, this Civil Miscellaneous Appeal is dismissed. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

nvi
To

Sub Assistant Registrar

1) The Motor Accidents Claims Tribunal
(Additional District and Sessions Judge/
Fast Track Court No.3),
Coimbatore.

2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.D.Bhaskaran, Advocate, S.R.No.12112

C.M.A.No.716 of 2011 and
M.P.No.1 of 2011

MR(CO)
SSM(11/06/2019)