IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.962 of 2013

B.Kamal ...Appellant/Petitioner

.Vs.

1.A.Balamani
2.Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers,
No.46, Whites Road, Chennai -14.
...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.09.2009 passed in MCOP.No.37 of 2007 on the file of the Motor Accident Claims Tribunal / Sub Court, Ranipet.

Appellant	:	Mr.V.Jagannathan for Mr.C.Prabhakaran
R1	:	No appearance
R2	:	Mr.N.Vijayaraghavan

JUDGMENT

The appellant is the claimant in MCOP.No.37 of 2007 on the file of the Motor Accident Claims Tribunal / Sub Court, Ranipet. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 06.07.2005.

2. The case of the claimant is that on 06.07.2005, he was a pedestrian on Ammoor road, Manthangal and at about 06.00 pm, a speeding car bearing Registration No.TN 22 AE 9987, hit him, as a result of which, he sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Car belonging to the first respondent was the cause of the accident and that since the said Car was insured with the Royal Sundaram Alliance Insurance Company, the owner and the insurer of the Car are jointly and severally liable to pay compensation.

3. The owner of the car remained absent before the Tribunal and therefore he was set exparte. The Royal Sundaram Alliance Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Ranipet while awarding a compensation of Rs.61,500/- together with interest at the rate of 7.5% per annum to the claimant, also concluded that since the driver of the car was not in possession of a valid driving licence on the date of the accident, the Insurance Company is not liable to pay compensation to the claimant. The Tribunal directed the owner of the car / the first respondent to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.V.Jagannathan, learned counsel appearing for the appellant contended that as per the settled legal principles of law, in the absence of a valid driving licence, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle.

5. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. Therefore, the Royal Sundaram Alliance Insurance Company Limited is directed to pay the award amount to the claimant in the first instance and then recover the same from the owner of the Car.

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The second respondent / Royal Sundaram Alliance Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.61,500/- together with interest at the rate of 7.5% per annum, to the credit of MCOP.No.37 of 2007 on the file of the Motor Accident Claims Tribunal / Sub Court, Ranipet within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the car / the first respondent on the same cause of action.

(iv) On such deposit being made, the claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Ranipet.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.96320
+1cc to Mr.B.Gopalan, Advocate, S.R.No.96686

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SJ(CO)
SP(21/08/2020)