

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.503 OF 2018

THE AUTHORISED SIGNATORY

M/S. RELIANCE GENERAL INSURANCE CO.LTD. NO.  
570 NEIGAUM CROSS ROAD NEXT TO ROYAL  
INDUSTRIAL ESTATE WADALA (WEST) MUMBAI.

... Appellant/2<sup>nd</sup> Respondent

Vs

1 DHARMAMBAL  
2 SRIVIDHYAA  
3 MINOR. M.K. VINAYAGARAM  
4 MINOR. K. GANESHARAM ...Respondents 1 to 4/Petitioners  
5 SAKEENA THAHIR ...5<sup>th</sup> Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicle Act against the award and decree dated 21.08.2017 in MCOP NO.57 of 2011 on the file of the Motor Accidents Claims Tribunal III Additional District Judge Puducherry.

For appellant : Mr.S.Arun Kumar

For respondents : Mr.L.Swaminathan,  
for respondents 1 to 4

J U D G M E N T  
सत्यमेव जयते

(made by K.K.SASIDHARAN, J.)

This Civil Miscellaneous Appeal is directed against the award dated 21 August 2017 and the challenge is only on the ground that there is no liability to reimburse the insured on account of the violation of the permit.

2. The respondents 1 to 4 initiated proceedings in M.C.O.P.No.57 of 2011 before the Motor Accident Claims Tribunal, Puducherry and claimed compensation on account of the death of Thiru.N.M.Karthikeyan, who died in a motor accident on 27 October 2009.

3. The deceased was working as Assistant Labour Commissioner, (Central) Bangalore. He was travelling in the car bearing registration No.PY 01 X 7777. The lorry bearing registration no.PY 03 0257, insured with the appellant, and driven by one Saravanan, in a rash and negligent manner, dashed against the car belonging to the deceased. The deceased died instantaneously. His mother, wife and minor children filed the claim petition. The claim was to pay a sum of Rs.75,00,000/- as compensation.

4. Before the Tribunal, the appellant contended that there was violation of the policy and as such, there is no liability on the part of the company to pay the compensation. The plea was negatived by the Trial Court and an award for a sum of Rs.61,23,944/- was passed in favour of the claimants.

5. The appeal is confined to the question of liability.

6. The learned counsel for the appellant contended that the appellant should have been given the right to pay and recover in view of the violation of the conditions of the policy. According to the learned counsel, the appellant pleaded and proved that there was no permit to enter the State of Tamil Nadu, and as such, the insurer has no liability to pay compensation.

7. There is no dispute that the appellant has taken up a contention that the insurer is not liable to pay compensation on account of the violation of the policy condition. The appellant examined the Junior Assistant attached to the Regional Transport Office, Ulundurpet and marked documents in Ex.X-1 to Ex.X-3 to show that the vehicle has no permit to ply through the State of Tamil Nadu. It is the said evidence, which is relied on by the appellant to show that on account of the policy violation, there is no liability to pay compensation.

8. The witness examined on the side of the appellant who is stated to be the Junior Assistant in the Regional Transport Office, Ulundurpet, tendered evidence to the effect that the accident took place in Tamil Nadu and there was no permit produced by the owner of the vehicle to show that permit was issued by the State of Tamil Nadu to ply the vehicle in the territory of Tamil Nadu. This is the only evidence relied on by the appellant to prove that there was no permit issued by the Transport Authority in the State of Tamil Nadu and as such, there was violation of the policy condition.

9. The owner remained exparte before the Court below. Evidence given by R.W.1 simply shows that the document was not

produced to show that permit was issued by the State of Tamil Nadu. There is nothing on record to show that with reference to the vehicle number, a search was made in the records to see as to whether any permit was issued by the authorities in the State of Tamil Nadu. We are therefore of the view that a blanket order permitting the appellant to recover the amount from the insurer could not be given in the subject case.

10. We grant liberty to the appellant to make a claim for reimbursement of the compensation from the insured. In case any such proceeding is initiated by the appellant for recovery, it is open to the insurer to plead and prove that a valid permit was issued by the Transport Department in the State of Tamil Nadu to ply the vehicle through the territory of Tamil Nadu.

11. No other contentions were raised before us in this appeal at the instance of the appellant. We therefore dispose of the appeal with liberty to the appellant to make a claim against the insured for reimbursement of the compensation amount, as indicated above.

12. The appellant is given six weeks time to deposit the remaining amount. We are informed that the minors have attained majority. It is open to the guardian to file application before the Motor Accident Claims Tribunal, Puducherry to declare the minors as major. We permit the claimants to withdraw the compensation amount proportionately, which includes the share of minor claimants, on production of proof of majority.

13. The appeal is disposed of with the above direction. No costs. Consequently, C.M.P.No.4495 of 2018 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

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Sub Assistant Registrar

tar

To

The Motor Accidents Claims Tribunal  
III Additional District Judge, Puducherry.

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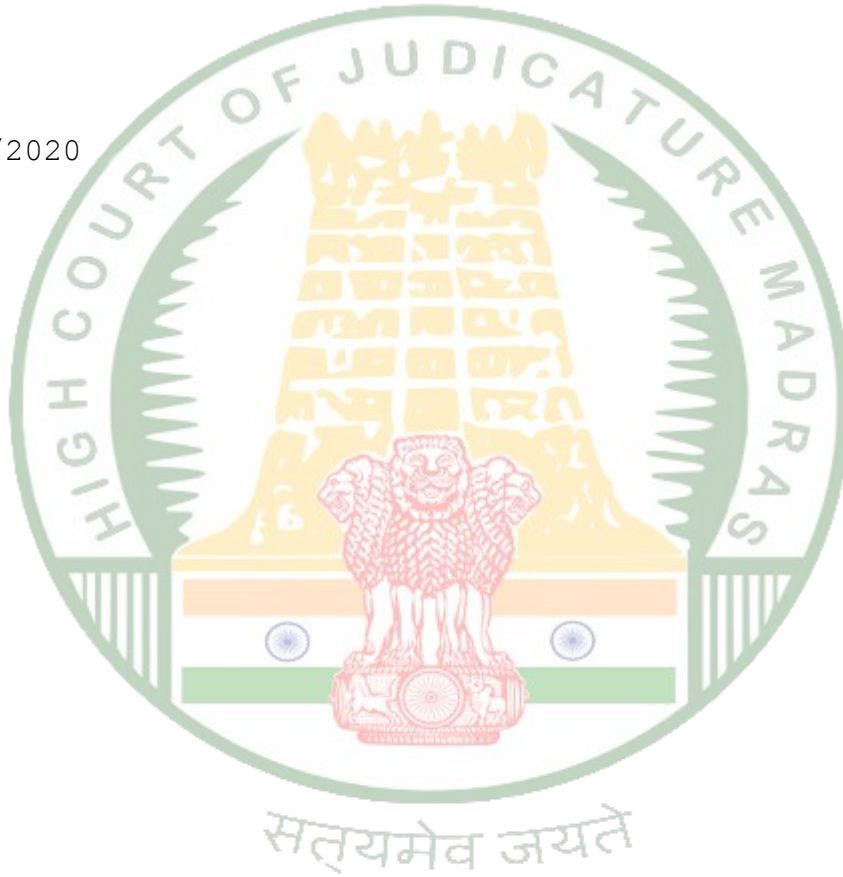
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The Section Officer,  
VR Section, High Court, Madras.

+1cc to M/s.S.Arunkumar, Advocate Sr.77825  
+2cc to M/s.L.Swaminathan, Advocate Sr.78294

C.M.A.No.503 OF 2018

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