IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.14.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1290 of 2013
&
M.P.No.1 of 2013

M/s.Reliance General Insurance Co. Ltd.,
First Floor, Geesay Arcade,
No.141/71, R.S.Puram,
Coimbatore - 641 002. ... Appellant/2nd Respondent

vs.

1.Chinnathal
2.K.Duraisamy
3.K.Thangaraj
4.V.Gunasekaran ... Respondent
(4th Respondent exparte in Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in MCOP.No.483 of 2008 dated 08.12.2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For Respondents 1 to 3: Mr.R.Nalliappan
Ex parte R4

JUDGMENT
[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the Insurance company challenging the impugned award dated 08.12.2011 passed by the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram in MCOP.No.483 of 2008.

2. Heard Mr. E.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan learned counsel for the Appellant and Mr.R.Nalliyappan learned counsel for the respondents 1 to 3. The fourth respondent who is the owner of the insured vehicle has

remained exparte both before the Tribunal as well as this Court.

3. The only ground raised by the Appellant insurance company in this Appeal is that the driver of the insured vehicle did not possess a driving licence and hence, they are not liable to compensate the claim of the respondents 1 to 3 who are the claimants before the Tribunal.

4. Before the Tribunal, the Appellant Insurance Company has filed four documents which were marked as Ex.R1 to Ex.R4 and two witnesses were examined on their side namely RW1 & RW2.

5. It has been the consistent stand of the Appellant/insurance company that the driver of the insured vehicle did not possess a valid driving licence. They have also sent a legal notice to the fourth respondent, the owner of the vehicle as per Ex.R4 calling upon him to produce the driving licence for the driver who caused the accident. The said notice has also been duly received by the fourth respondent as evidenced by Ex.R4, the acknowledgement card. Despite the receipt of said notice, the fourth respondent failed to produce the driving licence of the driver who caused the accident before the Tribunal.

6. The pleadings of the Appellant before the Tribunal as well as the deposition of RW1 and RW2 is categorical and they have also stated that the driver of the insured vehicle was not possessing a driving licence at the time of the accident. In fact, RW1, the R.T.O. Official has also deposed that no driving licence was issued to the driver of the insured vehicle from their office.

7. If at all, the driver of the insured vehicle was possessing a driving licence, the owner of the vehicle namely the fourth respondent in this Appeal would have placed the same before the Tribunal. Having failed to do so, despite receipt of legal notice from the Appellant/ insurance company, it can be conclusively inferred that the driver of the insured vehicle was not possessing a driving licence at the time of the accident. As seen from the impugned award also, no proper reasons have been given by the Tribunal for not granting pay and recovery rights to the Appellant.

8. For the foregoing reasons, it can be conclusively established that the driver of the insured vehicle was not possessing a driving licence at the time of the accident. Hence, pay and recovery rights have to be necessarily granted to the Appellant/insurance company. Accordingly, this Appeal is partly

allowed by directing the Appellant/insurance company to pay the compensation amount as assessed by the Tribunal under the impugned award to the respondents 1 to 3 who are the claimants in MCOP.No.483 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgement and on such payment, they are given liberty to recover the said amount from the fourth respondent who is the owner of the vehicle in accordance with law. The Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the respondents 1 to 3 in the ratio apportioned by the Tribunal under the impugned award through RTGS within a period of two weeks from the date of deposit by the Appellant insurance company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

2.The Section Officer,
VR Section, High Court,
Chennai.

SPD(CO)
CB(10/02/2021)