IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3597 of 2011
and
MP No.1 of 2011

The Oriental Insurance Co. Ltd.
Siva Complex,
2nd Floor, 22-C,
Saradha College Main Road,
Salem – 636 016. .... Appellant/2nd Respondent

Versus

1.Murugan (died) ..2nd Respondent /1st Respondent
2. Balamurugan
3. Dheivanai
4. Minor Sarumathy
5. Minor Sougar
Respondents 4 and 5 are minors
and represented by their mother
and natural guardian Dheivanai / 3rd respondent

6. Bakkiammal * .... Respondents
* Respondents 3 to 6 are brought on record
as legal representatives of the deceased
1st respondent, vide order dated 23.07.2020
made in CMP Nos.3760, 3761 and 3763 of 2020

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MACTOP No.35 of 2010 on the file of the Motor Accidents Claims Tribunal (Fast Track Court, Additional District Judge) at Dharmapuri, dated 8.6.2011.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.V. Kumaravelan for R1,R3 to R6,
R2 – Not ready in notice

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 08.06.2011 passed by the Motor Accidents Claims Tribunal, Fast Track Court, Additional District Judge at Dharmapuri, in MCOP No.35 of 2010.

2. Mr.Murugan, the claimant died during the pendency of this appeal and the respondents 3 to 6 were brought on record as his Legal Representatives by order of this Court, dated 23.07.2020 passed in CMP Nos.3760, 3761 and 3763 of 2010.

3. The only contention raised in this appeal by the Insurance Company is that the Tribunal ought to have granted pay and recovery rights to the appellant / Insurance Company. According to them, despite establishing before the Tribunal through oral and documentary evidence that the Driver of the insured vehicle did not possess a Driving Licence, the Tribunal has erroneously failed to grant pay and recovery rights.

4. Mr.M.Krishnamoorthy, learned counsel for the respondent. Mr.V.Kumaravelan, learned counsel for the respondents 3 to 6. Despite service of notice to the second respondent / owner of the vehicle, he remained ex-parte before the Tribunal as well as before this Court.

5. Admittedly, before the Tribunal, the RTO official has been examined as witness (RW1), who has deposed that the Driver of the insured vehicle did not possess a Driving Licence. A consistent stand has been taken by the appellant / Insurance Company, as seen from the evidence available on record that the Driver of the insured vehicle did not possess a valid Driving Licence. As seen from the evidence available on record, the appellant has called upon the owner of the insured vehicle (Ex.B4, letter sent to the owner of the vehicle) to furnish a copy of the Driving Licence of the Driver, who caused the accident, which was also received by the owner and the acknowledgment card has also been marked as Ex.B6. Despite receiving the said notice, the owner of the insured vehicle has neither responded to the said notice nor has he furnished a copy of the Driving Licence of the Driver. This being the case, the appellant has established before the Tribunal that the Driver of the insured vehicle did not possess a Driving Licence at the time of the accident. The oral evidence of the first respondent before the Tribunal also does not reveal that the Driver of the insured vehicle was possessing a Driving Licence. However, the Tribunal has erroneously without appreciating the evidence available on record has not granted pay and recovery rights to the appellant, as it is a clear case of policy violation committed by the owner of the vehicle for having allowed the insured vehicle to be driven by a Driver, who did not possess a licence.

6. For the foregoing reasons, the Civil Miscellaneous Appeal shall stand partly allowed by granting pay and recovery rights to the appellant / Insurance Company and permitting them to seek recovery of the compensation amount paid to the claimant from the owner of the insured vehicle. Excepting for this modification, as regards the quantum of compensation fixed by the Tribunal is concerned, which is payable to the

legal representatives of the first respondent are concerned, the same is not disturbed by this Court. No costs. Consequently, connected miscellaneous petition is closed.

7. The appellant / Insurance Company is directed to deposit the entire award amount as awarded by the Tribunal together with interest at 7.5% p.a. from the date of the claim petition till the date of realization and costs, less the amount, if any, already deposited to the credit of MCOP No.35 of 2010, within a period of four weeks from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2
To
1. The Additional District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court,
Dharmapuri

2.The Section Officer,
V.R. Section,
High Court of Madras, Chennai - 104.

A.SK(20.05.2021)