IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2873 of 2012
and
M.P.No.1 of 2012

(Through Video Conferencing)

The Oriental Insurance Co. Ltd.,
Having its Branch Office,
Suguna Buildings, No.707,
Avanashi Road,
Coimbatore - 18. ... Appellant/3rd Respondent

Vs.

1.Parimala
2.Minor. Maheswari
3.Karuppayee
4.M.Muthu @ Angamuthu
5.K.S.Unnikrishnan
6.V.N.Jayabal ... Respondents/
Petitioners 1 to 3
RR1,2,4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.10.2011 made in M.C.O.P.No.1535 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

Though the notice on the respondents has remained unserved, since no adverse orders are proposed to be passed against them, this Civil Miscellaneous Appeal is taken up for final disposal as only a limited issue relating to liability to pay and recovery arises for consideration in this appeal. The 6^{th} respondent has also remained exparte before the Tribunal.

2. The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 10.10.2011 passed by the learned Principal Subordinate Judge as the presiding officer of the Motor Accident Claims Tribunal, Coimbatore in M.C.O.P.No.1535 of 2005.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,65,640/- as compensation together with interest at 7.5% per annum from 04.08.2005 onwards till the date of realization, payable by the appellant Insurance Company to the 1st to 3rd respondents/claimants.

4. Aggrieved by the liability fixed on the appellant Insurance Company, it has been filed the present Civil Miscellaneous Appeal.

5. It is the contention of the learned counsel for the appellant Insurance Company that the records reveal that the accident vehicle which was insured with the appellant Insurance Company was driven by the 4th respondent without valid licence at the time of accident. The relevant portion of the Judgment reads as under:-

> 6. P.W.1 deposed that the first respondent is the driver of the vehicle bearing registration No.TDC 3273 belongs to the 4th respondent and insured with the 3rd respondent. So all the respondents are jointly and severally liable to pay the compensation. To prove the same the copy of the Motor Vehicle Inspector's report marked as Ex.P4. The 3rd respondent also admitted the valid insurance coverage for the above said vehicle at the time of accident and marked the insurance policy as Ex.R1 and further contends that the first respondent without proper and effective driving license driven the vehicle, the 4th respondent also allowing the first respondent without have effective driving license and violated the policy conditions. To prove the contentions in the counter objections the 3rd respondent examined an officer of the Corporation as RW1. On perusal of the Ex.P4 Motor Vehicle Inspector's report column No.7, the Motor vehicle inspector mentioned as no valid Driving license for (end of the 3rd page in the original) first respondent. The 3rd respondent pointed out the same and contends that the first respondent without

proper and effective license driven the vehicle at the time of accident. Further to prove the same the 3rd respondent issued notice to the 1st and 4th respondent as per Ex.R3 and the same has been received by the first respondent as per Ex.R4 and the returned cover of the 4th respondent marked as Ex.R5. The 3rd respondent further submitted that since the first respondent has driven the vehicle without proper driving license the court should adopt the pay and recovery method for determining the liability of the respondents. The petitioner's counsel submitted that Ex.P4 Motor vehicle inspector's report obtained from the criminal court marked to proved that the vehicle TDC 3273 involved in the accident. Merely in column No.7, mentioned as no valid driving license, cannot be taken as a proof that the first respondent without proper driving license driven the vehicle at the time of accident. It is the bounden duty of the 3rd respondent to prove before this forum that the first respondent without proper driving license driven the vehicle at the time of accident. In this case the 3rd respondent with regard to contention alleged in the counter objections regarding that the driving license of the first respondent has not adduced any substantive evidence before this Court, Hence on the basis of the Ex.P.4. report alone this court cannot come to the conclusion that the first respondent driven the vehicle without proper driving license at the time of accident. Further the 3rd respondent request the driving particulars of the first respondent as per Ex.R.3 notice dated 09.07.2011, when the case posted for petitioner's side evidence. Hence the contention of the 3rd respondent that the pay and recovery method to be adopted in this case is not sustainable and the respondents are the jointly and severally liable to pay compensation as determined by this court and answered this point accordingly.

6. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company. I have also perused evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. The Judgment of the Tribunal proceeds on the assumption that the appellant Insurance Company had to produce proof that the driver of the insured vehicle did not possess a valid driving licence before ordering to pay and recover from the owner of the vehicle. However, Ex.P4 Motor Vehicle Inspector's report indicates that the driver of the insured vehicle had driven the insured vehicle without valid licence. Therefore, I do not find any merits in the same.

8. Accordingly the impugned Judgment is modified by allowing the appellant Insurance Company to pay and recover the amount from the 6th respondent Mr.V.N.Jayapal owner of the accident vehicle.

9. Therefore, if the amount of compensation awarded by the Tribunal has not deposited by the appellant Insurance Company, it is directed to deposit the same together with interest as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the 1st and 3rd respondents/1st and 3rd claimants are permitted to withdraw their respective shares together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application.

11. As far as the share of the minor 2nd respondent/2nd claimant is concerned, her share shall deposit in any one of the Nationalised Bank under reinvestment scheme till she attains age of majority. The 1st respondent/1st claimant, who is the natural guardian/mother of the minor, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, the 2nd respondent/2nd claimant is to be permitted to withdraw her share, by filing suitable application before the Tribunal.

12. This Civil Miscellaneous Appeal is disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:-

The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Coimbatore.

C.M.A.No.2873 of 2012
and M.P.No.1 of 2012

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