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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A. No.435 of 2017

1.Gayathri
2.Minor Madhumitha
3.Minor Sandhya
4.Minor Nasathranjan

Appellants 2 to 4 are represented by
their natural guardian, mother,
the 1st appellant Mrs. Gayathri.

5.Papathi Ammal
6.Chellammal ... Appellants/Claimants

Vs

1.Singaram
2.National Insurance Co. Ltd.,
Divisional Office,
Pondicherry. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order passed on 6.3.2014 in M.A.C.T.O.P. No.150 of 2012 by the Hon'ble Motor Accident Claims Tribunal (III Addl. District and Sessions Court, Kallakurichi).

For Appellant : Mr. A.G.Rajan
For Respondent 1 : No Appearance
2 : Mr. J.Michael Visuvasam

JUDGMENT

This appeal has been preferred by the appellants / claimants against the award in M.A.C.T.O.P. No.150 of 2012 on the file of Motor Accidents Claims Tribunal (III Addl. District and Sessions Court, Kallakurichi).

2. It is not in dispute that the Tribunal has awarded a sum of Rs.7,22,000/- by way of compensation along with interest

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7.5%. The entire award was only against the first respondent / owner of the vehicle. In a case like this, normally the second respondent Insurance Company is liable to pay compensation. However, the Tribunal found that the driver of the vehicle who caused the accident did not have driving license at the time of accident. Therefore, the Tribunal has held that the insurance company is not liable and the owner of the vehicle is liable to pay compensation. Challenging the same, the appellants / claimants have preferred this appeal.

3. It is well settled in similar cases that the liability of insurance company cannot be avoided on the ground that the driver of the vehicle did not have driving license at the time of accident. Since it is a contract between the insurer and the owner, the statutory liability of insurance company against third party cannot be avoided by contract of insurance. It has been held in a few judgments of Hon'ble Supreme Court that the owner of the vehicle jointly with insurance company is liable to pay compensation and of course, it is also held that the insurance company is entitled to recover the money from the owner of vehicle for violation of policy conditions.

4. In result, the order of Motor Accidents Claim Tribunal in M.C.O.P. No.150 of 2012 is modified to the effect that the first and second respondents are liable to pay the entire compensation of Rs.7,22,000/- along with interest. The second respondent is entitled to get back / recover the money from the owner of the vehicle namely the first respondent. The second respondent / insurance company shall pay the amount at the first instance to the appellant / claimant and then the insurance company is entitled to recover the money paid to the claimants from the first respondent. The insurance company is at liberty to treat this order as a decree and file execution petition against the owner of the vehicle.

5. This Civil Miscellaneous Appeal is disposed of in term of this order. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bkn
To

1.The Motor Accident Claims Tribunal,
(III Addl. District and Sessions Court, Kallakurichi),
Kallakurichi.

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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.33489

C.M.A. No.435 of 2017

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CB(25/08/2021)

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