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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1609 OF 2015 &
M.P.NO.1 OF 2015

National Insurance Company Limited,
Divisional Office-II,
State Bank Road,
Coimbatore - 641 018.

... Appellant/
3rd Respondent

Vs

1.Y.Theivanai
2.Minor Maniaswaran
3.Minor Umamaheswari

... Respondent 1 to 3/
Petitioner 1 to 3

(Respondents 2 & 3 Rep by his mother Tmt.J.Theivanai)

4.A.Rahimulla
5.K.Gowri

... Respondents 4 & 5/
Respondent 1 & 2

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 05.02.2015 and made in MCOP.NO.429 of 2014 on the file of the Motor Accident Claims, Coimbatore (Special Subordinate Judge, Coimbatore).

For Appellant	: Mr.S.Vadivel
For Respondents 1 to 3	: Ms.M.Subha
For Respondent 5	: Mr.Sutharsan for Mr.P.R.Balasubramanian
R4	: Served-no appearance

JUDGMENT

(This case is heard through Video Conferencing)

This civil miscellaneous appeal has been filed by the Insurance company challenging the award dated 05.02.2015 passed by the Motor Accident Claims Tribunal (Special Sub Court, Coimbatore) in MCOP.No.429 of 2014.



2. The main grievance of the Insurance Company in this appeal is that pay and recovery rights has not been granted to them, despite the fact that the driver of the insured vehicle violated the permit conditions. With regard to the quantum of compensation awarded by the Tribunal in favour of the claimants is concerned, the Insurance Company has not raised any serious dispute in this appeal.

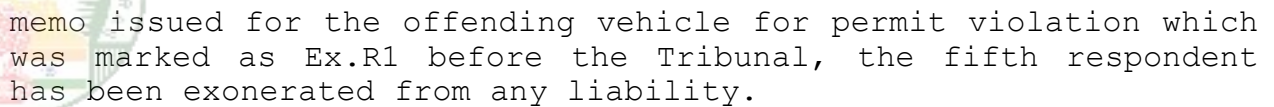
3. Learned counsel for the Appellant drew the attention of this Court to the findings of the Tribunal which is found in page 27 of the impugned Award dated 05.02.2015 which reads as follows:

" To prove the same the Motor Vehicle Inspector was examined as RW1 and the charge memo issued for the offending vehicle for permit violation was marked as Ex.R1. Even thereby it is proved that permit violation by the offending vehicle at the time of the accident, since no such defence is available to the insurance company under the motor vehicles act, it will not exonerate the insurance company from its liability. Hence, the 3rd respondent is liable to indemnify the 2nd respondent. Accordingly, this Forum answered the point No.3 as the 2nd and 3rd respondents are jointly and severally liable to pay compensation and the third respondent has to pay the entire compensation amount to (end of the 11th page in original) the petitioners."

4. According to the learned counsel for the Appellant, when the Tribunal has given a categorical finding based on the deposition of the Motor Vehicle Inspector (RW1) that there was a permit violation, the Tribunal has erroneously not granted pay and recovery rights to the Appellant.

5. Learned counsel for the fifth respondent who is the insured and the second respondent in the claim petition would categorically contend that there was no permit violation as alleged by the Appellant. He would submit that the fifth respondent had remained exparte before the Tribunal and therefore, she may be given an opportunity to defend her case as according to him, since the vehicle was possessing a valid permit at the time of the accident and there was no permit violation, the fifth respondent cannot be held liable to pay compensation as alleged by the Appellant/Insurance Company.

6. Admittedly, the fifth respondent who is the insured had remained exparte before the Tribunal. Only based on the deposition of RW1, the Motor Vehicle Inspector and the charge



7. The Appellant Insurance Company has filed this appeal, aggrieved by the findings of the Tribunal exonerating the fifth respondent who is the insured.

9. The Award has been passed for a sum of Rs.20,83,000/- which is a huge sum. Therefore, the fifth respondent who had remained exparte before the Tribunal must be given an opportunity to prove her case that at the time of the accident, the vehicle was possessing a valid permit and that, she had not committed any permit violation. This court after giving due consideration to the aforementioned factors, is of the considered view that the matter will have to be necessarily remanded back to the Tribunal for fresh consideration only with regard to the issue as to whether the fifth respondent was having a valid permit for the insured vehicle at the time of the accident and as to whether he has committed permit violations.

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for pay and recovery rights and the Tribunal shall pass final orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this Judgment.

11. Because of the remanding of the matter to the Tribunal for fresh consideration with regard to the issue involved in this appeal is concerned, the claimants should not made to suffer in a dispute which revolves only between the Appellant/insurance company and the fifth respondent who is the insured.

12. For the foregoing reasons, the civil miscellaneous appeal is disposed of. Since the quantum of compensation awarded by the Tribunal is confirmed by this Court, the Appellant Insurance company is directed to deposit the entire award amount as awarded by the Tribunal together with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.429 of 2014 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal is directed the transfer the respective share of award amount together with accrued interest to the bank account of the first respondents through RTGS as per the ratio apportioned by the Tribunal. Since the second and third respondents are minor, their respective shares of award amount shall be deposited in interest bearing fixed deposit in any one of the Nationalised banks till they attain majority. The first respondent/mother of the respondents 2 and 3 is permitted to withdraw the interest once in six months for the welfare of the minor respondents. If they attain the age of majority, it is open for them to file a formal petition to declare them as major. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

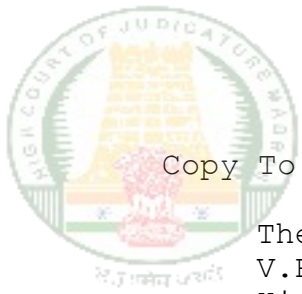
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Sub Assistant Registrar

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To

The Special Subordinate Judge,
The Special Subordinate Court,
Coimbatore.



Copy To

The Section Officer,
V.R.Section,
High Court of Madras.

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+1cc to Mr.S.Vadivel, Advocate, S.R.No.33460

C.M.A.No.1609 of 2015

SRA (CO)
PM/18/11/2021