IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2407 of 2021
and CMP No.13724 of 2021

M/s Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam, Chennai ... Appellant

Vs

V.Vadivel (Died)

1. V.Ashok Raj
2. V.Karthikeyan
3. V. Sathish Kumar
4. S.Rajkumar ... Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 22.07.2019 made in MACT.O.P.No.515 of 2016 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant	: Mr. S.Arun Kumar
For R.2 & R.3	: Mr.K.Ramesh
For R4	: Served, No Appearance

JUDGMENT

This appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2. The Insurance Company has challenged the award on the ground that despite the fact that the rider of the motorcycle did not possess a valid driving licence, the Tribunal has failed to grant pay and recovery rights to the appellant. In the appeal, they have not questioned the quantum of compensation awarded by the Tribunal. The Tribunal under the impugned award directed the 2nd respondent to pay a compensation of Rs.10,90,000/- (Rupees Ten Lakhs Ninety thousand only)) with interest to the respondents/claimant as detailed here under:-

Heads	***Amount awarded by the Tribunal (Rs.)***
Loss of Dependency	9,75,000/-
Loss of Love and Affection	75,000/-
Transport Expenditure	10,000/-
Loss of Estate & Funeral Expenses	30,000/-
Total compensation	10,90,000/-

3. The appellant Insurance Company has filed five documents before the Tribunal which have been marked as Exs.R.1 to R.5 and one witness was examined on their side.

4. It is the consistent stand of the appellant Insurance Company that the rider of the motorcycle did not possess a valid driving licence. They have also sent notice to the owner of the motorcycle to produce the copy of the driving licence of the rider of the motorcycle which has been marked as Ex.R.3.

5. The Motor Vehicle Inspector's Report has been marked as Ex.R.5 before the Tribunal which discloses that the driving licence was not produced by the rider of the motorcycle. The notice sent by the appellant/Insurance Company to the fourth respondent/owner of the motorcycle has been received by Mr.Sekar, father of the fourth respondent.

6. The Tribunal has erroneously not granted pay and recovery right to the appellant only on the ground that the appellant/Insurance Company did not examine the Regional Transport Officer as a witness to show that the rider of the motorcycle did not possess a valid driving licence.

7. It is not necessary to examine the Regional Transport Officer for the purpose of proving that the rider of the motorcycle did not possess a valid driving licence. Having been served with the notice by the appellant calling upon the fourth respondent to produce the driving licence of the rider of the motorcycle, the fourth respondent ought to have responded to

the said notice and produced the driving licence of the rider of the motorcycle. Since the fourth respondent has not produced the driving licence of the rider of the motorcycle, it can be inferred that the rider of the motorcycle did not possess a valid driving licence at the time of the accident.

8. The Tribunal has erroneously failed to appreciate the evidence available on record and has come to the erroneous conclusion that pay and recovery rights cannot be granted to the appellant. Therefore, this Court sets aside the finding of the Tribunal insofar as the non grant of pay and recovery rights is concerned.

9. Since sufficient opportunity has been given by the appellant/Insurance Company to the fourth respondent/owner of the motorcycle to produce the valid driving licence and despite the same the fourth respondent having not produced the driving licence, this Court is of

the considered view that at the time of the accident, the rider of the motorcycle, owned by the fourth respondent, did not not posses a valid and effective driving licence. Therefore, the Tribunal ought to have granted pay and recovery right to the appellant, but erroneously, has failed to grant the same to the appellant Insurance Company. Accordingly, this Court grants pay and recovery right to the appellant Insurance Company.

10. In the result, this appeal is allowed and pay and recovery rights is granted to the appellant/ Insurance Company. The appellant/Insurance Company is directed to deposit the entire award amount after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.515 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.515 of 2016 to the bank account of the respondents/claimants

through RTGS within a period of one week thereafter.

11. On deposit of the entire award amount, the appellant / Insurance Company is granted the right to recover the same from the fourth respondent/owner of the motorcycle by adopting the procedure established under law.

No costs. Consequently, connected miscellaneous petition is closed.

29.10.2021

Index:Yes/No
Speaking Order: Yes/No
sr

To

1. Motor Accidents Claims Tribunal,
   III Small Causes Court, Chennai

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

ABDUL QUDDHOSE.,J

sr

C.M.A. No. 2407 of 2021

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