IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1241 of 2018

Lakshmi (Deceased)
S.Mani .. Appellant/2nd Petitioner

Vs.

1.M.Ponnurangam

2.The Oriental Insurance Company Limited,
Rep.by its Branch Manager, Katpadi Road, Vellore.
.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2014 made in M.C.O.P.No.56 of 2006 on the file of Motor Accident Claims Tribunal, Sub-Court, Arani.

For Appellant	:	Mr.P.Satheesh Kumar
For R1	:	No Appearance
For R2	:	Mr.D.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-claimants challenging the portion of the award dated 17.11.2014 made in M.C.O.P.No.56 of 2006 on the file of Motor Accident Claims Tribunal, Sub-Court, Arani.

2.The appellant is claimant in M.C.O.P.No.56 of 2006 on the file of Motor Accident Claims Tribunal, Sub-Court, Arani. He filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by the first appellant, namely Lakshmi herein in the accident that took place on 05.02.2006. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the 1st respondent and dismissed the claim petition against the

2nd respondent-Insurance Company and directed the 1st respondent to pay a sum of Rs.15,000/- as compensation to the appellant. The appellant has come out with the present appeal challenging the portion of the award exonerating the 2nd respondent-Insurance Company from its liability.

3.According to the learned counsel appearing for the appellant-claimant, the Tribunal has erred in exonerating the 2nd respondent-Insurance Company from its liability on the ground that the rider of the two wheeler did not possess driving licence at the time of accident. The Tribunal ought to have ordered pay and recovery and prayed for setting aside the portion of the award exonerating the 2nd respondent-Insurance Company from its liability.

4.Per Contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the rider of the two wheeler did not possess driving licence at the time of accident and in contravention of policy condition, he drove the vehicle and caused the accident. The Tribunal has rightly exonerated the 2nd respondent-Insurance Company from its liability and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the Tribunal dismissed the claim petition against the 2nd respondent only on the ground that the rider of the two wheeler did not possess driving licence at the time of accident. The said reasoning for dismissal of the claim petition against the 2nd respondent is erroneous. It is well settled that if the rider of the two wheeler or driver of the four wheeler did not posses driving licence, the Insurance Company must satisfy the award at the first instance from the Insurance Company with liberty to recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

7.By applying the said principle of law to the present case, the portion of the award exonerating the 2nd respondent-Insurance Company, on the ground that the rider of the two wheeler belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation amount of Rs.15,000/- to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

8.In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.15,000/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed and the 2nd respondent-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellant-claimant is permitted to withdraw the entire amount awarded by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

gbi

To

1.The Sub-Judge,
Motor Accident Claims Tribunal, Arani.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.66428
+1cc to Mr.P.Satheesh Kumar, Advocate SR.No.66569

C.M.A.No.1241 of 2018

GP(CO)
CB(16/03/2022)