BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 18.02.2021
CORAM
**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD)No.888 of 2011**
**and**
**M.P(MD)No.3 of 2011**

Branch Manager
New India Assurance Co., Ltd.,
77/78, South Car Street,
Sivakasi. ..Appellant/2nd Respondent

vs.

1.M.Mariammal
2.M.Shenbagavalli
3.M.Rajeswaran
4.M.Vigneswaran
5.M.Nimala Devi
6.Lakshmiammal

(Minors R3 to R5 declared as major vide Judgment dated 18.02.2021) ..Respondent 1 to 6/Petitioners

7.S.Amutha ..7th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award dated 06.11.2009 made in MCOP No.52 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Sivakasi.

For Appellant :Mr.N.Dlipkumar
For Respondents :Mr.Michael Bharathi (for R1 to R5)
No appearance for R7
R6 - Dismissed

**J U D G M E N T**

This appeal is by the Insurance Company challenging the award of the Motor Accident Claims Tribunal, Sub-Court, Sivakasi passed in MCOP No.52 of 2005 dated 06.11.2009.

2.This is the case of the fatal accident. The claimants are the legal heirs of the deceased Mahendran. According to the claimants, on 06.03.2005, the deceased and his brother one Chidambaram were travelling in a motorcycle bearing registration No.TN-67-R-8592. The deceased was a rider and his brother was pillion rider. While so, the rider of the motorcycle bearing registration No.TN-67-R-8473, who was following the vehicle of the deceased, hit against the two wheeler, in which, the deceased was a rider. In the accident, the deceased died on the spot.

3.The prime contention of the appellant is that the rider of the offending vehicle was not having a valid and effective driving license and hence, no liability can be fastened on the Insurance Company. In order to prove the defense, they examined three witnesses on their side and marked two documents. Ex.P.4 produced on the side of the claimants shows that the rider of the offending vehicle was having licence to driver light motor vehicle. The Tribunal accepting the fact that the rider of the two wheeler was having licence only to drive light motor vehicle, observed that the appellant has not established that the rider was disqualified from holding or obtaining license in respect of the two wheeler to make the Insurance Company liable to pay compensation. In this regard, it is useful to refer the Section 10 of the Motor Vehicles Act, which reads thus:-

> "10. Form and contents of Licence to drive.-
>
> (1) Every Learner's Licence and Driving Licence, except a Driving Licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
>
> (2) A Leaner's Licence or, as the case may be, Driving Licence shall also be expressed as entitling the holder to drive a Motor Vehicle of one more of the following classes, namely, -
>
> (a) Motorcycle without Gear;
> (b) Motorcycle with Gear;
> (c) invalid carriage;
> (d) Light Motor Vehicle;
> (e) Transport Vehicle;
> (i) Road-Roller
> (j) Motor Vehicle of a specified description."

4.A plain reading of the above provision would make it clear that the above Section was amended in the year 1994 prescribing Forms and contents of license to drive different category of vehicles. Therefore, a person, who wants to drive a two wheeler, is required to take a separate licence of driving a two wheeler. However, the Tribunal overlooking the amendment brought into the Motor Vehicles Act, held that the person who is having light motor vehicle, is entitled to drive a two wheeler.

5.An identical issue came up for consideration before the Hon'ble Apex Court in **Oriental Insurance Co. Ltd. vs. Zaharulnisha and others** (**AIR 2008 SC 2218**), wherein, it has been observed and held that the Insurance Company cannot be made liable to pay amount of compensation if the vehicle was driven by the person, who had no valid and effective licence to drive the vehicle on the date of accident. The relevant paragraph is extracted hereunder:-

> "18. In the light of the above-settled proposition

of law, the appellant insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who is admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act."

6.In the latest decision of this Court reported in **2019(1) TN MAC 373 (Chandru vs. Multi Speciality Lab Services Pvt. Ltd.)** it has been held as under:-

> 14.A person must possess a Driving Licence in respect of the class of vehicle which he wants to drive. From a bare reading of Section 10 of the Act, it is clear that licence for a Motorcycle is for a separate class of vehicle than for an LMV. A person possessing a licence for LMV or even for a Transport Vehicle may not be competent to drive a Two-wheeler. On the strength of a License to drive a Two-wheeler. Therefore, the Tribunal was right in holding that at the time of accident, the Appellant was not in possession of valid Driving Licence to drove a Two-wheeler."

7.In the present case, indisputably, the driver of the offending vehicle did not possess a licence to drive motorcycle at that relevant time, however, he was issued with a licence of driving LMV. In view of the decisions referred supra, the finding of the Tribunal could not be affirmed. Hence, it is hereby set aside.

8.Taking note of the fact that admittedly the deceased was a third party and the Insurance Company has proved that the vehicle was driven by a person who was not having valid driving license, this Court directs the Insurance Company to satisfy the award amount to the claimants and thereafter, recover the same from the owner of the vehicle. Since the appellant has not disputed the quantum, it is confirmed.

9.The claim petition of the year 2005 and at that relevant point of time, the claimants 3 to 5 were minors and by now, they should have been become majors. So, they are declared as majors and the Tribunal is hereby directed to disburse their share.

10.In that view, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the owner of the vehicle. On such deposit, the claimants are permitted to withdraw their share, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)



// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal,
Sub Court, Sivakasi.

2.The Record Keeper,(2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate ( SR-6222[F] dated 19/02/2021 )

+1 CC to M/s.V.SASI KUMAR, Advocate ( SR-6244[F] dated 19/02/2021 )

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KB(23.06.2021) 4P 6C