BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**06.09.2021**
DELIVERED ON	**15.09.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.18 of 2019

Palaniraj ...Appellant/1st respondent

Vs.

1.Usha @ Thayammal
2.Minor.Ramya
3.Minor.Arunkumar
4.Ponnammal ...R-1 to R-4/Petitioners 1 to 4

[Minors 2 & 3 respondents represented through their mother and next friend 1st respondent **]**

5.The United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Post Office road,
Palayamkottai,
Tirunelveli - 2. ...5thRespondent/2nd respondent

PRAYER: Civil Miscellaneous Petition filed under Section 30 of Workman Compensation Act, to set aside the order in W.C.No.39 of 2008 on the file of the Deputy Commissioner of Labour, Tirunelveli, dated 30.04.2012 with respect to pay and recovery against the appellant and entire liability should be fixed on the insurance company.

For Petitioner :Mr.T.Selvakumaran
For R-1 to R-3 :Mr.K.Kumaravel
For R-4 :No appearance
For R-5 :Mr.N.Dilip Kumar

O R D E R

This Appellant/1st respondent has filed this Civil Miscellaneous Petition to set aside the order, dated 30.04.2012 passed by the learned Deputy Commissioner of Labour, Tirunelveli, in W.C.No.39 of 2008.

2. The respondents 1 to 4/petitioners 1 to 4 have filed W.C.No.39 of 2008 for compensation for death of the husband of R-1,

who died in an accident while he was in service.

3.Since the deceased had not possess valid driving licence lead to violation of insurance policy, the learned Deputy Commissioner of Labour, Tirunelveli, ordered the R-2/insurance company in W.C.No.39 of 2008 to pay the compensation and recovery the amount from R-1/appellant/owner of the vehicle.

4.Aggrieved by the said order, dated 30.04.2012, the 1st respondent/owner of the vehicle filed this Civil Miscellaneous Petition.

5. Heard Mr.T.Selvakumaran, learned counsel appearing for the petitioner and Mr.K.Kumaravel, learned counsel appearing for R-1 to R-3 and Mr.N.Dilip Kumar, learned counsel appearing for R-5.

6.The lower forum has decided that there was no dispute about the relationship between the deceased and R-1 as employee and employer. The insurer did not file any appeal against the findings regarding the relationship between the deceased and appellant/owner of the vehicle.

7.Since the deceased had no valid licence, the learned Deputy Commissioner of Labour, Tirunelveli, ordered to pay and recovery. The Insurance company had already deposited the entire amount of compensation.

8.The learned counsel for the appellant relied upon the Judgment in the case of ***United India Insurance Co. Ltd., Vs. Noora, reported in 2007 ACJ, Page No64.*** The relevant portion of the Judgment is extracted hereunder:

> *"Workmen's Compensation Act, 1923, Section 3 (1) and Motor Vehicles Act, 1988, Section 149(2) (a)(ii) - Arising out of and in the course of employment - Motor insurance - Driving licence - Defences available to insurance company - driver met with fatal accident - Employer admitted employment of the workman and his death in accident during the course of his employment - Insurance company disputed its liability on the ground that deceased had no valid driving license to drive the vehicle - Whether the insurance company is exempted from liability - Held : no; provisions of Workmen's Compensation Act do not prescribe that if a driver is employed he should possess a valid licence".*

9.In this case the employer admitted that the deceased was his employee and he died during the course of his employment. There is no dispute about the facts.

10.The deceased did not possess any valid licence at the time of accident. The driving licence was also not produced. The contention of the appellant is in the Workmen Compensation Act, nowhere prescribed that a valid licence is necessary to attract the liability of the insurer. Therefore, pay and recovery cannot be ordered. Only the insurance company is liable to pay compensation.

11.It is the duty of the employer that to verify the driving licence when he appoint a driver as his employee. There is no pleadings that he verified the licence. It is not the case of appellant that the deceased possessed valid licence.

12.If a person allowed to operate vehicle, he should possess a valid license and without having valid licence, if a person permitted to drive a vehicle, the owner of vehicle violates the policy and he is liable to pay compensation.

13.As per Judgment in the case of ***Belram Vs. Rajinder Kumar and another in Civil Appeal Nos.7220 - 7221 of 2011*** the Hon'ble Supreme Court held as follows:

> *"The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the Claimants should be given, but violence should not be done to the clear and plain language of the Statute. Thus, while protecting the rights of the Claimants by asking the Insurance Company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the Owner of the vehicle, It was, thus, observed in Para 18 as under:*
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> *"18. When an Employer employed a Driver, it is his duty to check that the Driver is duly licensed to drive the vehicle, Section 5 of the Motor Vehicles Act provides that no Owner or person incharge of a motor vehicle shall cause of permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 & 4 of the Motor Vehicles Act. The owner must show that he has verified the Licence. He must also take reasonable care to see that his Employee gets his Licence renewed within time. In my opinion, it is no defence for the Owner to plead that he forgot that the Driving Licence of his Employee had to be renewed. A person when he hands his motor vehicle*

to a Driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the Driving Licence or had given instructions to his driver to get his Driving Licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the Policy and the Insurance Company could not have been held liable to satisfy the claim".

14.Therefore, the owner of the vehicle is liable to pay compensation only on sympathy on the dependants of the deceased, the learned Deputy Commissioner of Labour, Tirunelveli, has passed an order for pay and recovery by the Insurance company.

15.The learned Deputy Commissioner of Labour, Tirunelveli, has rightly passed an order for pay and recovery. This Court has no valid reason to interfere with the findings of the learned Deputy Commissioner of Labour, Tirunelveli.

16.In fine, this Civil Miscellaneous Petition is dismissed and the order, dated 30.04.2012, passed by the learned Deputy Commissioner of Labour, Tirunelveli, in W.C.No.39 of 2008, is hereby confirmed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Deputy Commissioner of Labour,
Tirunelveli.

+1 CC to M/s.S.KUMARAVEL, Advocate (SR-29065[F] dated 15/09/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-29156[F] dated 15/09/2021)

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15.09.2021

PS(CO)
KB(23.09.2021) 5P 4C