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C.M.A.No.1237 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1237 of 2011
and
Cross.Obj.SR.No.100928 of 2012

C.M.A.No.1237 of 2011

New India Assurance Company Ltd.,
No.43, Moore Street,
Chennai - 1.

... Appellant

/versus/

1. M.Rayappan
2. R.Jeneva Nithya
3. R.Vinodh Britto Amalraj
4. G.Ramdoss

... Respondents

Cross.Obj.SR.No.100928 of 2012

1. M.Rayappan
2. R.Jeneva Nithya
3. R.Vinodh Britto Amalraj

/Versus/

1. New India Assurance Company Ltd,
No.43, Moore Street,



C.M.A.No.1237 of 2014

Chennai-1.

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2. G.Ramdos

(since R2 was set exparte in the
Tribunal notice may be dispensed with)

PRAYER in C.M.A.No.1237 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.04.2010 made in M.C.O.P.No.777 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (II Fast Track Court), Chennai.

PRAYER in Cross.Obj.SR.No.100928 of 2012: Cross Objection filed under Order 41, Rule 22 of C.P.C, against the decree and judgment dated 22.04.2010 made in M.C.O.P.No.777 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (II Fast Track Court), Chennai.

For Appellant : Mr.Vinod
M/s.Elveera Ravindran

For R1 to R3 : Mr.T.G.Balachandran
For R4 : No appearance



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JUDGMENT

The Insurance Company is the appellant herein.

2. The respondents 1 to 3 herein are the claim petitioners before the Claims Tribunal in M.C.O.P.No.777 of 2016 claiming compensation for the death of wife of the first petitioner.

3. After trial, the tribunal has awarded a sum of Rs.3,79,000/- towards compensation. Though the tribunal has held that as per Ex.R3 charge sheet, at the time of the accident the driver was not having valid driving licence, pay and recovery was not ordered. However, the tribunal has ordered both the owner of the vehicle and the insurer are jointly and severally liable to pay the compensation. Challenging the liability, the Insurance Company has preferred this appeal.



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4. After going through Ex.R3 charge sheet filed in Crime No.N2/06/N1/06 and also taking note of the condition of the policy as contained in Ex.R2 and also the judicial pronouncement of the Hon'ble Supreme Court in *National Insurance Co Ltd V Swaran Singh*, reported in **2004(1) TNMAC 104 (SC)** , the Insurance Company is not liable, since at the time of the accident, the driver was not having valid driving license to drive the two wheeler.

5. However, based upon the above judicial pronouncement, the Insurance Company is required to pay the compensation and recover the same from the owner of the vehicle. Accordingly, the award passed in M.C.O.P.No.777 of 2006, dated 22.04.2010 is partly modified to the extent as indicated above, except the above pay and recovery clause, the award amount appears to be just and reasonable.



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6. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The balance award amount shall be deposited to the credit of M.C.O.P.No.777 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge (II Fast Track Court), Chennai, after deducting the amount already deposited, within a period of eight weeks, from the date of receipt of a copy of this order.

(iii) On such deposit, the claimant petitioners/ respondent R1 to R3 are permitted to withdraw the same as apportioned by the tribunal, after filing appropriate application.

7. The Cross objection has been filed by the claim petitioners/cross objectors. The learned counsel appearing for the cross objectors seeks permission of this Court to dismiss the Cross Objection as not pressed. Accordingly, this Cross Objection is dismissed as not pressed at the SR stage itself.

09.12.2022

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Index : Yes / No

Speaking Order : Yes / No



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To

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1. The Motor Accident Claims Tribunal,
Additional District Judge (II Fast Track Court), Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

RMT.TEEKAA RAMAN, J.,

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Cross.Obj.SR.No.100928 of 2012

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