



C.M.A.No.2551 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 09.03.2022

CORAM:

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2551 of 2011 and
and M.P.No.1 of 2011

National Insurance Co. Ltd.,
Tuticorin and having
Divisional Office at
Ellen Building,
Sathy Road, Coimbatore.

... Appellant

VS.

1. Selvaraj
2. Murugesan
3. P.Rajasekar
4. Harikrishna Seni
5. H. Vanitha
6. The New India Assurance Co. Ltd.,
Chittur and having Regional Office
at Obli Towers, D.B. Road,
R.S.Puram, Coimbatore.
7. M.Pandi



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8. P.Chandrasekaran

9. The New India Assurance Co. Ltd.,
Regional Office, Obli Towers,
D.B.Road, R.S.Puram,
Coimbatore.

(Respondents 2,3,7 and 8 are set exparte in
Lower Court)
Respondents

...

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988, against the Judgment and Decree dated 20.08.2010 made in M.A.C.T.O.P.No.1166 of 2006 on the file of the Motor Accidents Claims Tribunal (First Additional District Judge) at Coimbatore.

For Appellant : Mrs.Sreevidhya

For Respondents: Mr.C.Santhosh Kumar
For Mr.S.Gunalan (R4 & R5)

Ms.C.Sangamithirai for R6
Mr.K.Padmanabhan for R9

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant-Insurance Company as against the Award passed in M.C.O.P.No.1166 of 2006 challenging the liability fixed on them.

2. M.C.O.P.No.1166 of 2006 was filed by the husband of the



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deceased Lakshmi, who died in the accident, that occurred on 16/17.07.2005. The deceased Lakshmi along with co-workers was returning in a Metador Van bearing Reg.No.TN-67-A-536 after attending trade union meeting. On Udumalpet Pollachi Road, a tempo trax bearing Reg.No.37-AC-3238 suddenly dashed from behind and in the said accident, deceased Lakshmi succumbed to injuries. The claimant/husband of the deceased claimed Rs.5,00,000/- as compensation from the respondents before the tribunal.

3. After trial, the learned Judge, Tribunal, answered the issues framed by him. Firstly, it is held that Section 163-A cannot be pressed into service to claim compensation against the vehicle and its insurance company without any overtact on their part for causing accident. Secondly, the learned Judge held that driver of the metador van, viz., was negligent and he did not have valid licence at that particular point of time and that it was a goods vehicle. Therefore, the reason that the deceased and other passengers traveled in the goods vehicle is the admitted fact and not disputed, therefore, the owner of the matador van violated the policy and permit condition. The motor vehicle inspection report also



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supported the said fact that vehicle insured by the owner of the matador van was driven by the driver who was not having valid licence.

4. The learned Judge, therefore, held that the driver of the matador van being the tort-feasor, owner of the matador van which caused accident are liable to pay the compensation and in view of the violation of the policy and permit conditions and that the driver did not have valid licence, liability of the insurance company could be absolved, however, taking into consideration the beneficial legislation, insurance company of the matador van was directed to deposit the compensation amount of Rs.3,77,500/- along with interest at the rate of 6% p.a., from the date of petition till the date of realization and recover the amount with interest from the first and second respondents before the Tribunal, viz., the driver and owner of the matador van. The learned Judge clearly held that respondents 4 to 9 before the tribunal are not liable to pay any compensation as there was no negligence and rashness established.



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5. The learned counsel for the appellant-insurance company has not raised any contention to point out any error in the judgment of the Tribunal nor raised any different kind of disputed question of fact before this court to take an exceptional view in this appeal. Upon detailed trial involving claim, counter statement, evidence both oral and documentary, the learned Judge, Tribunal, fixed the liability on the driver and owner of the matador van involved in the accident which vehicle was driven without valid license and in violation of policy and permit conditions. In such view of the fact, the appeal filed by the insurance company viz., the appellant has no merits. Accordingly, the appeal is dismissed.

6. The appellant-Insurance Company is directed to deposit the entire amount as awarded by the Tribunal, along with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount if any already deposited. On such deposit, the claimant/1st respondent herein (husband of the deceased) is entitled to withdraw the entire award amount along with proportionate interest less

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the amount, if any already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes / No

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To:-

1) The Motor Accident Claims Tribunal
(First Additional District Judge),
Coimbatore.

2) The Section Officer,
V.R.Section,
Madras High Court.

Judgment made in

C.M.A.No.2551 of 2011