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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.407 of 2021
and C.M.P.No.2639 of 2021

National Insurance Co.Ltd.,
by its Manager,
D.No.88-F, By-pass Road,
Dharmapuri Town,
Dharmapuri Taluk & District

...Appellant/2nd Respondent

Vs

1.Srinivasan

...1st respondent/Petitioner

2.V.Krishnan

...2nd respondent/ 1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 27.11.2019 and made M.C.O.P No.763/2017 on the file of the Court of the MACT/Special Subordinate Judge, Dharmapuri.

For Petitioner : Mr.S.Vadivel

For Respondent : No Appearance [R1]
Not ready in notice [R2]
Not Find

ORDER

Aggrieved by the Award of the Tribunal the Insurance Company is before this Court. The insurance company is aggrieved by the omission on the part of the Motor Accident Claims Tribunal, Dharmapuri, to grant the relief of pay and recover to the Insurance Company that too after giving this finding in answer to the 2nd point for consideration. In the point for consideration no.2, the learned Judge has held as follows:

"Ex.P5 is the registration certificate in the name of R1-Tn 29 BC 9645, Ex.P6 is the report of the Insurance Policy of R1 filed to show that his vehicle was insured from 22.04.2016 till 21.04.2017



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with the 2nd respondent. Ex.P7 is the driving license of the petitioner valid upto 23.09.2018. Ex.P10 is the MV report R1's TN 29 BC 9645 which proved that R1 doesn't possess licence for which CR issued and he paid penalty. Thus from the MV report it is proved that R1 without possessing licence came rash and negligent and caused the accident.

The Swaran Singh case decided that Pay and recovery can be ordered if the insurance company had taken steps and proved the driver of the vehicle had driven without driving license. A portion of extract from the decision."

Ultimately in the summary of findings the Learned Judge has extracted as follows:

"When the rash and negligence of the R1 was proved by point No.1, then automatically R1 as owner and driver becomes liable to compensate the petitioner. R1 had insured with R2, so R2 as the insurer of the insured becomes jointly and severally along with R1 to compensate the petitioner and this point is decided accordingly."

The learned Judge had omitted to include the direction that the 1st respondent can pay and recover from the 2nd respondent.

2. Finally, the same has not been incorporated in the operative portion of the order and consequently the decretal order. The claimant 1st respondent though served has not entered appearance.

3. In these circumstances and following the Judgment referred supra, the order of the Tribunal is modified to the following extent. After the end of paragraph no.15 to add the following: "on such payment the insurance company applying the case of Swaran Singh can recover the said money from the owner of the vehicle, namely the 2nd respondent herein".

4. In fine, the appeal is partly allowed in terms of Para 3 supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



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To

1. The Special Subordinate Judge,
The Motor Accident Claims Tribunal, Dharmapuri

Copy To:

The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.S.Vadivel, Advocate, S.R.No.8517

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RP (CO)
SB(14/06/2022)