



WEB COPY



C.M.A.No.3430 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.3430 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
United India Insurance
Company Ltd.,
Branch Office-II,
137-D, Cherry Road,
Salem 636 001.

... Appellant

vs.

1.Geerammal
2.Minor.Sathishkumar
3.Minor.Srisha
4.Minor.Nithisha
(Minors rep.by their next friend
Mother Geerammal)
5.D.Selvi

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2014 passed in M.C.O.P.No.637 of 2013 on the file of the Motor Accident Claims Tribunal (District Judge, Special District Court), Krishnagiri.



WEB COPY



C.M.A.No.3430 of 2014

For Appellant : Mrs.R.Sreevidhya
For R1 : M/s.Mukund R.Pandiyan
For R2 to R4 : Minors
For R5 : No Appearance

J U D G M E N T

This appeal is filed by the appellant-Insurance company as against the award passed by the Tribunal in M.C.O.P.No.637 of 2013. The challenge in the present appeal is to the liability to pay compensation to the respondents/claimants 1 to 4. According to the appellant, the finding of the Tribunal is the driver of the offending vehicle had no licence and no valid endorsement.

2. This appeal has been preferred by the appellant-Insurance Company questioning the liability to pay compensation to the respondents/claimants 1 to 4 in case of no valid driving license .

3. Before the Tribunal, on behalf of the insurance company, R.W.1 and and R.W.2 deposed that the offending vehicle was insured with the insurance company and used for commercial purpose. Therefore, the



C.M.A.No.3430 of 2014

driver should possess badge to drive public transport vehicle. The document under Ex.P.4 driving licence of the driver of the offending vehicle does not contain the details of transport vehicle. It only contain the endorsement that “to drive light motor vehicle”. The owner of the vehicle had allowed a person without valid and effective driving licence to drive public utility vehicle.

4. The learned Judge, Tribunal held that even though R.W.1 Senior Assistant of the Insurance company, admitted that the owner of the vehicle had filed claim form with the insurance company and the office copy of the said claim form was not furnished as a document before the tribunal. The failure of the insurance company to furnish such document would draw adverse inference under Section 114 of the Indian Evidence Act. The tribunal held that the oral evidence of R.W.1 and R.W.2 cannot be treated as discharge of the burden cast upon the insurance company to prove their absolving liability. The tribunal thus held that the evidence of R.W.1 is rejected.



C.M.A.No.3430 of 2014

5.The tribunal also held that in the absence of any positive evidence favouring the insurance company, the insurance company is liable to indemnify the owner of the vehicle to pay the compensation to the victim of the accident; that apart the victims being the third parties to the contract of insurance, entered into between the owner of the vehicle and the insurer of the vehicle, the insurance company is duty bound to pay compensation. The said finding of the Tribunal is well founded.

6.The other aspects of the award passed by the tribunal is not disputed in this appeal. Therefore, this court is not inclined to interfere with the award passed by the Tribunal.

7.In the result, the Civil Miscellaneous Appeal is dismissed. The appellant insurance company is directed to deposit the compensation of Rs.9,31,000/- awarded by the tribunal together with interest at the rate of 7.5% per annum, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimant -1st respondent is entitled to withdraw her share as per



C.M.A.No.3430 of 2014

the apportionment of the tribunal. As far as minors share are concerned, the same shall be deposited in the nationalized bank and the respondents 2 to 4 on attaining their majority, is entitled to withdraw their share along with interest. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2022

Index : Yes/No
Internet : Yes/No
Speaking : Non speaking order

kkd/nvsri

To

1.The Motor Accident Claims Tribunal
(District Judge, Special District Court),
Krishnagiri.
2.The Section Officer
V.R.Section
High Court of Madras.



WEB COPY



C.M.A.No.3430 of 2014

J.NISHA BANU,J.

Kkd/nvsri

C.M.A.No.3430 of 2014

28.04.2022