



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2022

Pronounced on : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.877 of 2021

and

C.M.P(MD)No.8271 of 2021

WEB COPY

M/s.Oriental Insurance Company Ltd.,
Through its Divisional Manager,
K.J.R.Complex,
16, North Veli Street,
Madurai-625 001.`

:Appellant/2nd respondent

.vs.

1.Thiru.R.P.Manjukumar
2.Thiru.V.Sethu

:1st Respondent/Petitioner

:2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Employee's Compensation Act, 1923, against the award dated 27.04.2021 in E.C.No.83 of 2017 on the file of the Commissioner for Employee's Compensation, Madurai.

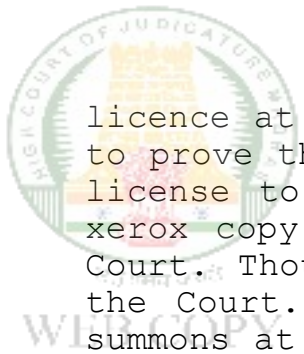
For Appellant
For R1
For R2

:Mr.C.Karthik
:Mr.K.R.Sivashankari
:No appearance

JUDGMENT

The Insurance company is the appellant herein has filed this appeal under Section 30 of the Employee's Compensation Act, 1923, challenging the liability of the Insurance Company, in respect of the award passed in E.C.No.83 of 2017.

2.The first respondent herein is the claimant claiming compensation for the death of a person employed by the second respondent herein, owner of the vehicle. The appellant, who is the second respondent before the Labour Court, specifically raised a plea that the claimant is not having any valid driving licence to drive the vehicle, owned by the second respondent herein, at the time of accident. So, he was cross examined. Hence, when the owner of the vehicle has allowed the person to drive the vehicle, who is not having driving licence, the Insurance Company has been fastened with the liability and also relied upon the judgment of the Hon'ble Supreme Court in **Civil. Appeal Numbers 7220-7221/2011 in Beli Ram- vs- Rajinder Kumar & Another**. When the Insurance Company raises a plea that the driver of the vehicle does not possess valid driving



licence at the time of accident, it is for the owner of the vehicle to prove that at the time of accident, the driver had valid driving license to drive the vehicle, either by producing the original or xerox copy of the same, at the time of the trial before the Lower Court. Though notice was issued, the same was not produced before the Court. The first respondent did not take any steps by taking summons at least to examine the second respondent, the owner of the vehicle, insured with the appellant Insurance Company.

3.The Labour Court records reveal the fact that the second respondent, owner of the vehicle herein, was set ex-parte and hence, nothing was produced on the side of the first respondent/claimant to establish and prove the fact that he is having valid driving licence at the time of accident. Therefore, I find that the Labour Court, has erroneously fixed the burden upon the Insurance Company to disprove that at the time of accident the driver of the vehicle does not possess valid driving licence. The judgment of the Hon'ble Supreme Court in the case of **Beli Ram-vs- Rajinder Kumar & Another** reported in **2020 (2) TNMAC 445 (SC)**, wherein the Hon'ble Apex Court has held that when the driver of the vehicle does not possess valid driving licence, to drive the vehicle at the time of accident, the claim under the Workman Compensation Act, cannot be fastened upon the Insurance Company, if at all the owner has to pay the same.

4.It is represented by the learned counsel appearing for the appellant/Insurance Company that the entire award amount has already been deposited to the credit of the claim petition. In view of the fact that as per this judgment, the appellant/Insurance Company is exonerated from its liability to pay compensation to the claimant, the Tribunal is directed to refund the award amount so deposited to the appellant/Insurance Company with proportionate accrued interest, on filing of necessary application. The owner of the vehicle is liable to pay the compensation and the claimant shall proceed against the owner of the vehicle following the due process of law.

5.With the above observations, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

1.The Commissioner for Employee's Compensation,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-15126[F] dated
29/03/2022)

C.M.A(MD)No.877 of 2021 and
C.M.P(MD)No.8271 of 2021
29.03.2022

RD(07.04.2022) 3P 5C