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CMA.No. 1274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1274 of 2022

1.S. Karimunisha
2.S. Jeelani

...Appellants

Versus

1.K.M. Padmanabhan
2.The New India Assurance Company Limited
Third Party Claims Office
Bombay Mutual Building
No. 232, NSC Bose Road, VI Floor
Chennai – 600 001.

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 11.01.2022 in M.A.C.T.O.P.No.2373 of 2019 on the file of Chief Judge, Court of Small Causes, Chennai.

For Appellants	:	Mr.K. Varadha Kamaraj
For R1	:	Exparte before the Tribunal
For R2	:	Mr.R. Rathnathara



CMA.No. 1274 of 2022

JUDGMENT

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The claimants have filed the above appeal challenging the award of the Claims Tribunal exonerating the 2nd respondent/Insurance Company. The accident, negligence and quantum of compensation awarded by the Claims Tribunal are not disputed. The short point to be decided in the appeal is whether a direction should be issued to the 2nd respondent/Insurance Company to pay and recover the compensation awarded to the claimants. It is an admitted fact that the driver of the offending vehicle viz., Bolero van did not possess a valid driving licence at the time of accident. The Tribunal relied on the judgment of the Hon'ble Supreme Court in Beliram's case (2020 (2) TNMAC 445) to exonerate the 2nd respondent/Insurance Company from the liability.

2. The learned counsel for the claimants relies on the decision of the Division Bench of this Court in **CMA.No. 2889 of 2022, dated 02.01.2023** in support of his contention that the Insurance Company should be directed to pay and recover from the owner. The Division Bench of this Court under similar circumstances held as follows:-



CMA.No. 1274 of 2022

“According to the learned counsel, as per the judgment of the Hon'ble Supreme Court in *Beli Ram Vs. Rajinder Kumar & Another*, the Insurance Company should not have been made liable to pay with liberty to recover. We are unable to sustain the contention of the learned counsel for the Insurance Company.

The judgment in *Beliram's* case arose out of a proceeding under the Workmen's Compensation Act (Employees' Compensation Act). The decision of the Hon'ble Supreme Court was based on consideration of the provisions of the said enactment. The same cannot be applied to the proceedings under the Motor Vehicles Act, since Section 149 (4) of the Motor Vehicles Act, which reads as follows:- “(4) Where a certificate of Insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been affected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liability as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect.” makes the insurer liable even in cases where there is a violation of policy conditions. However, proviso 2 of Sub-Section 4 gives a right to the Insurance Company to pay the compensation and recover the same from the Insurer. In view of Section 149, we do not think, we could apply the



CMA.No. 1274 of 2022

principle laid down in Beliram to the case on hand”.

WEB COPY

3. In my view, the above decision squarely applies to the facts of the present case and therefore, following the aforesaid Division Bench Judgment a direction is issued to the 2nd respondent/Insurance Company to pay the compensation awarded by the Claims Tribunal to the claimants and thereafter, recover the same from the Insured.

4. The learned counsel for the 2nd respondent/Insurance Company also fairly conceded that in the light of the judgment of the Division Bench of this Court, there could be no objection to the direction to pay and recover.

5. For all the above reasons, the Civil Miscellaneous Appeal is allowed.

13.06.2023

Index : Yes / No
Speaking Order : Yes/ No
Neutral Citation : Yes/No
MSM



CMA.No. 1274 of 2022

To

WEB COPY

1. The Chief Judge, Court of Small Causes, Chennai.
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



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CMA.No. 1274 of 2022

N. MALA, J

msm

C.M.A.No. 1274 of 2022

13.06.2023