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C.M.A.No.966 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.966 of 2014

Ashraf Ali

... Appellant/Petitioner

vs.

1.M.Nagarajan (Died)

2.The Branch Manager,
United India Insurance Company Ltd.,
Nagapattinam.

3.The Branch Manager,
Oriental Insurance Company Ltd.,
Thiruvarur.

4.Mrs.Jayanthi

5.Arunkumar

6.Saranya ... Respondents/Respondents

[Respondent 1-died. Respondents 4 to 6
brought on record as LR's of the deceased

R1 viz., M.Nagarajan vide Court Order

dated 03.03.2023 made in

C.M.P.Nos.1211 to 1213 of 2018 in

C.M.A.No.966 of 2014]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree passed by the the Motor Accident Claims Tribunal / Sub-Court, Mannargudi in



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M.C.O.P.No.131 of 2007 dated 28.02.2012.

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For Appellant : M/s.Samanta & Ston

R1 - Died

For 2nd Respondent : Mrs.I.Malar

For 3rd Respondent : Mr.K.Vinod

JUDGMENT

Challenge is made against the Judgment and Decree passed in M.C.O.P.No.131 of 2007 dated 28.02.2012 on the file of Motor Accident Claims Tribunal / Sub-Court, Mannargudi, by the appellant/claimant by way of filing this Civil Miscellaneous Appeal.

2. Claim petition was filed under Section 166 of Motor Vehicles Act 1988, claiming compensation of Rs.6,00,000/- for the injury sustained by Ashraf Alin in the accident that occurred on 09.11.2004.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence has granted compensation of Rs.2,24,320/- from the date of filing of petition fastening liability on the 1st respondent alone against this judgment, this Civil Miscellaneous Appeal is preferred by the appellant/claimant herein.



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4. The learned counsel for the appellant/claimant would strenuously contend that the driving licence of the rider of the erred vehicle was not marked. He would further contend that in Ex.P2 Motor Vehicle Inspector's Report of the erred vehicle in column No.19, it is mentioned as driving licence not produced. It is his further argument that as the policy was in force, the Insurance Company may be ordered to pay and recover the same from the owner.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company would vehemently argue that the rider of the erred vehicle did not possess valid driving licence and the same is reflected in the Motor Vehicle Inspector's Report Ex.P2 herein. As the 1st respondent has violated the policy condition by riding the vehicle without driving licence, policy cannot be honoured. Therefore, the judgment of the Tribunal to the effect that compensation ordered is to be paid by the 1st respondent (owner) is a well reasoned order and need not be interfered with.

6. Heard the arguments of learned counsel for both sides and perused the materials on record.



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7. At trial, the injured and one Dr.Rajagopal are examined as PW1 and PW2. Exs.P1 to P9 were marked. Copy of the Motor Vehicle Inspector's Report of the erred vehicle is Ex.P2. On the respondents' side, two witnesses were examined as RW1 and RW2. Investigation Report is Ex.R1.

8. It is the evidence of PW1 (claimant / injured) that on 09.11.2004, at about 1.30 p.m., when he was proceeding in his motor cycle bearing Reg.No.TN-50-C-3479 along the Thiruthuraipoondi road proceeding from west to East, another motor cycle bearing Reg.No.TN-51-B-8483 came in a rash and negligent manner and at a great speed hit against his motor cycle and due to the said impact, he was thrown out and sustained serious injuries, is not in dispute.

9. According to the 2nd respondent / Insurance Company, it was claimed that the 1st respondent did not have valid driving licence at the relevant point of time and hence, the 2nd respondent / Insurance Company is not liable to pay the compensation to the injured.



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10. The relevant document is Ex.P2 - Motor Vehicle Inspector's Report of the erred vehicle. On a careful perusal of the same in column No.19, it is mentioned that driving licence is not produced (Driving Licence of the 1st respondent). Therefore, it was made clear that he drove the vehicle without any valid driving licence which amounts to violation of policy conditions. In ***Oriental Insurance Co.Ltd v. Shri.Nanjappan and others*** reported in **2004 (2) CTC 464**, the Apex Court has held that if the driver of the offending vehicle did not possess valid driving licence on the date of accident, the insurer must be directed to satisfy the award with liberty to recover the same from the owner of the vehicle. On the date of accident, the insurance policy was in force. As per the law laid down by the Apex Court, the 2nd respondent / Insurance Company is liable to satisfy the appellant/claimant at the first instance and entitled to recover the same from the owner of the vehicle namely the 1st respondent at the later stage.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is **confirmed**.

(iii) The 2nd respondent / United India Insurance Company is directed to deposit the compensation amount i.e., **Rs.2,24,320/-** (less the amount



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already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.131 of 2007 on the file of the Motor Accident Claims Tribunal / Sub-Court, Mannargudi, within a period of eight weeks from the date of receipt of a copy of this Judgment and to recover the same from the owner of the 1st respondent at a later stage.

(iv) On such deposit being made, the claimant is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, after adjusting the amount, if any already withdrawn, by filing cheque petition before the Tribunal.

29.09.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Sub-Court, Mannargudi.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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