IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.812 of 2022
and
C.M.P.No.5818 of 2022

The Manager,
United India Insurance Company Limited,
No.7, Varadhanar Street,
Chengalpattu. ... Appellant

Vs.

Boologammal (died)

1.Ramadoss
2.Kamatchi
3.Kavitha
4.Deivanathan
5.Birla ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.33 of 2015, dated 19.03.2021, on the file of the Motor Accident Claims Tribunal, in the Court of Chief Judicial Magistrate, Full Additional Charge, Chengalpattu.

For Appellant : Mr.M.B.Raghvan
For M/s.M.B.Gopalan Associates

For R1 to R4 : Mr.G.Krishnamurthy
For Mr.E.Kumarakotti

For R5 :Died (steps not taken)

JUDGMENT

The appellant is the Insurance Company herein.

2. The 5th respondent is stated to be dead and no steps have been taken.

3. The Insurance Company has preferred this appeal challenging the award granted in M.C.O.P.No.33 of 2015 on the ground that they are not liable to pay the compensation under the policy as there is a violation of policy condition.

4. The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, insured with the respondent company are not in dispute and accordingly the same are hereby confirmed.

5. The learned counsel for the appellant contended that at the time of the accident, the driver of the two wheeler does not possess a valid driving license and hence the same would amount to violation of policy condition (Ex.R2). As per Ex.R2, it is a package policy. While the injured is a pedestrian, the two wheeler dashed against him and the accident had taken place.

6. To substantiate the plea, the Insurance Company-the second respondent before the Tribunal examined Motor Vehicle Inspector Grade-II Mr.Gnanavel as R.W.1 and marked Ex.R1 Authorization letter and searching slip; R.W.2 is a Deputy Manager of the second respondent-Insurance Company. They also issued a notice to the driver of the vehicle, which was received by the said person and acknowledgement card is marked as Ex.R6.

7. Taking into consideration the oral evidence of R.W.1 and R.W.2 coupled with Ex.R2, this Court finds that at the time of the accident, the driver of the vehicle did not possess a valid driving license and hence the same amounts to violation of policy condition and therefore, the Insurance Company is not liable to pay the compensation jointly and severally. However, following the judicial decision of the Hon'ble Supreme

Court decision in *National Insurance Company Limited Vs.Swaran Singh and others reported in 2004 (1) TNMAC 104 (SC)*, this Court is inclined to issue a direction to the appellant/Insurance Company to pay the award amount with appropriate costs with interest and recover the same from the owner of the vehicle .

8. With this modification, this Civil Miscellaneous Appeal is partly- allowed. No costs. Consequently, connected C.M.P is closed.

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

To

1. The Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Full Additional Charge, Chengalpattu.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

RMT.TEEKAA RAMAN, J.,

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