BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1047 of 2012

Sekar .....Appellant/ Petitioner

-vs-

1. N.Raju (died)

2. The Oriental Insurance Company Limited,
   Represented by its the Divisional Manager,
   Door No.6-A, 2nd Floor,
   Pankur Dharmasala Building,
   West Veli Veethi,
   Madurai.

3. Rakkammal
4. Palaniyammal
5. Pandiyaraja
6. Thirisangu
7. Eswari
8. Panchavarnam .... Respondents /Respondents
   (Respondents 3 to 8 are brought on record as
   LRS of the deceased 1st respondent vide
   order of this Court dated 22.11.2022 made in
   C.M.P(MD) Nos. 9365, 9366 and 9369 of 2022
   in C.M.A.(MD) No.1047 of 2012)

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.97 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Sivagangai, dated 30.03.2012.

For Appellant	: Mr.K.Kumaravel
For Respondents	: Mr.S.Veeranasamy – for R2 : No appearance – for R3 to R8

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the claimant challenging the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Sivagangai, made in M.C.O.P.No.97 of 2009.

2. According to the injured claimant, he was driving a two wheeler on 27.12.2008 at about 07.00 p.m. Another two wheeler owned by the first respondent, driven by Malaichamy @ Gandhi in a rash and negligent manner caused the accident. In the said accident, the injured claimant sustained grievous injuries and therefore, he has claimed for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.

3. The owner of the offending vehicle had remained ex-parte and the second respondent viz., Insurance Company had filed a counter contending that the driver of the offending vehicle did not have any valid and effective driving licence at the time of accident and they have also questioned the quantum of compensation.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving of the vehicle belonging to the first respondent. The Tribunal also arrived at a finding that the Malaichamy @ Gandhi, who had driven the offending vehicle at the time of the accident, did not have any driving licence at the relevant point of time. After arriving at such a finding, the Tribunal exonerated the Insurance Company and mulcted the liability upon the owner of the offending vehicle. Thereafter, he proceeded to fix the total compensation at Rs.1,43,000/- (Rupees One Lakh Forty Three Thousand only). This award is under challenge by the claimants on the ground that the Insurance Company ought not to have been exonerated by the Tribunal.

5. The learned counsel appearing for the appellant/claimant relied upon the Hon'ble Division Bench judgment of our High Court reported in ***2021 (2)***

TANMAC -23 (United India Insurance Company Ltd., Vs. G.Amutha and others) had contended that once the Tribunal arrives at a finding that the driver of the offending vehicle did not have a valid driving licence, the Tribunal should only pass an award directing the Insurance Company to satisfy the award and recover the same from the owner of the offending vehicle. Whenever, there is a breech of policy condition, the Insurance Company cannot be exonerated in entirety but they have to be directed to pay the compensation and permitted to recover the same from the owner of the vehicle.

6. Per contra, the learned counsel appearing for the second respondent had contended that the Insurance Company has specifically sent a legal notice to the owner and driver of the offending vehicle under Ex.R.4. Even though both of them have received the said notice no reply was sent by them. Therefore, it is clear that the owner of the vehicle knowing fully well that the driver Malaichamy @ Gandhi did not possess the valid and effective driving license permitted the driver to drive the vehicle. Therefore, the Tribunal was right in exonerating the Insurance Company and mulcting the liability upon the owner of the vehicle.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. The Tribunal has arrived at a specific finding that the driver of the offending vehicle viz., Malaichamy @ Gandhi has driven the vehicle in a rash and negligent manner and he had caused the accident. The Tribunal has also arrived at a finding that the driver of the offending vehicle did not have any valid driving licence and therefore mulcted the liability upon the owner of the offending vehicle viz., the first respondent in the claim petition. This finding has not been challenged by the owner of the vehicle. Therefore, it is clear that the accident had happened only due to the rash and negligent driving on the part of the driver of the offending vehicle and the driver of the offending vehicle did not possess any valid driving license.

9. The learned counsel appearing for the appellant has rightly relied upon the Hon'ble Division Bench judgment of our High Court reported in ***2021 (2) TANMAC-23 (United India Insurance Company Ltd., Vs. G.Amutha and others),*** that whenever there is a violation of the policy condition, the Insurance Company cannot be exonerated and the Insurance Company should be directed to satisfy the award and they may be permitted

to recover the amount from the owner of the vehicle. However, in the present case, the Tribunal has exonerated the Insurance Company completely and the entire liability has been mulcted upon the owner of the vehicle in violation of the Division Bench judgment of this Court.

10. In view of the above said deliberations, the quantum of the award passed by the Tribunal is hereby confirmed. The second respondent/Insurance Company is directed to satisfy the award and thereafter, they are at liberty to recover the same from the owner of the vehicle viz., the first respondent in the claim petition, following the judgment of the Honourable Supreme Court reported in ***(2004) 13 SCC 224 (Oriental Insurance Company Ltd., Vs. Nanjappan and others).***

11. With the above said observations, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

26.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal/
   Chief Judicial Magistrate, Sivagangai,

2. The Oriental Insurance Company Limited,
   Represented by its the Divisional Manager,
   Door No.6-A, 2nd Floor,
   Pankur Dharmasala Building,
   West Veli Veethi,
   Madurai.

3. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1047 of 2012

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