



C.M.A.(MD).No.1579 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1579 of 2011

National Insurance Company Limited,
Through its Branch Manager,
2A, Thirumakkulam North Street,
First Floor,
Tallakulam, Madurai Town,
Madurai District.

... Appellant/
2nd Respondent

-VS-

1. A.Petchimuthu
2. Rakku
3. Panchavarnam
4. Arumugam
5. Murugan
6. Muthukumar
7. P.Jagadeeswaran

... Respondents 1 to 6
/Petitioners
... 7th Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.5 of 2010, dated 09.12.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.



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For Appellant : Mr.J.S.Murali

For Respondents : Mrs.N.S.Shanmugapriya
for R1 to R6
: No appearance – for R7

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Sivagangai, made in M.C.O.P.No.5 of 2010 primarily on the ground of liability.

2. According to the claimants, the deceased was sitting on the back side of the bicycle and while on his way to hospital, she met with an accident on 18.06.2009 due to the rash and negligent driving on the part of the two wheeler owned and driven by the first respondent. The claimants have sought for compensation of a sum of Rs.4,00,000/- (Rupees Four Lakhs only).

3. The Insurance Company had filed a counter specifically contending that the driver of the two wheeler was not holding effective driving license at the relevant point of time.



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4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the Insurance Company has not established the fact that the driver of the offending vehicle was not having an effective and valid driving license at the relevant point of time. Based upon the said finding, the Tribunal proceeded to fix the compensation at Rs.2,16,000/- (Rupees Two Lakhs Sixteen Thousand only) and further held that the owner and the insurer are jointly and severally liable to pay the said award amount. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant, they have taken a specific stand in the counter that the driver of the two wheeler was not having a valid and effective driving license on the date of the accident. They have also issued a legal notice to the owner under Ex.R2. The driving license was not produced even at the time of inspection of the vehicle by the Motor Vehicle Inspector. The owner has voluntarily remained ex-parte. Therefore, the driver of the vehicle was not having a driving license at the relevant point of time. Hence, he prayed for allowing the appeal.



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6. Per contra, the learned counsel appearing for the respondents 1 to 6/ claimants has contended that even assuming that the driver of the two wheeler was not having an effective driving license at the relevant point of time, that would not effect the liability on the Insurance Company to satisfy the award. The owner of the vehicle had remained ex-parte before the Tribunal and he could not be served in the appeal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

8. The primary contention on the side of the Insurance Company is that the driver of the offending vehicle was not having a valid driving license at the relevant point of time. After receipt of notice in M.C.O.P proceedings, the Insurance Company has issued a notice to the owner of the vehicle to produce the Insurance Policy and the driving license. However, the said notice has been returned with an endorsement that the “addressee is left”.

9. A perusal of Ex.P.3- Motor Vehicle Inspector's Report also indicates that no driving license was produced along with the vehicle. Though the owner was served with a notice before the Tribunal, he has not chosen to



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appear. Whether the driver of the offending vehicle was having a valid and effective driving license at the relevant point of time or not, is in the special knowledge of the owner of the vehicle. There is a statutory obligation on the part of the owner of the vehicle to hand over the vehicle only to a person who is having a valid and effective driving license. Therefore, whenever an accident takes place, it is the duty on the part of the owner to establish before the Court that the vehicle was handed over to a person holding a valid driving license. In the present case, the Insurance Company has taken a specific stand that the driver of the two wheeler was not having an effective driving license on the date of accident. However, after receiving notice, the owner has not entered appearance neither filed counter nor let in any oral evidence to establish the fact that the driver viz., Muthuraman was having a driving license on the date of accident. Therefore, the Tribunal was not right in arriving at a finding that the Insurance Company has not established the fact that the driver of the offending vehicle was not having valid driving license.

10. In view of the above said facts, it is clear that the vehicle has been handed over by the owner of the vehicle to a person who was not having a valid and effective driving license on the date of accident. It is not only a violation of policy condition but also a statutory violation. Therefore, this



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Court is inclined to set aside the award of joint and several liability. The appellant/Insurance Company shall satisfy the award and thereafter, is entitled to recover the same, following the judgment of the Honourable Supreme Court reported in ***(2004) 13 SCC 224 (Oriental Insurance Company Ltd., Vs. Nanjappan and others)***. In other respects, the award of the Tribunal is confirmed.

11. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as stated above. There shall be no order as to costs.

20.06.2023

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

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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