



C.M.A(MD)No.669 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.669 of 2019

The Divisional Manager,
Cholamandalam MS.General
Insurance Company Ltd.,
No.3&4, 1st Floor, New Millennium Complex,
Dindigul Main Road,
Kalavasal,
Madurai District.

... Appellant/2nd Respondent

Vs.

1.Maheswari

2.Sathya

3.Priya

... Respondents/Petitioners

4.Rameshkumar

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the judgment and decree passed in M.C.O.P.No.90 of 2018 on the file of the Motor Accident Claims Tribunal, (VI Additional District Court), Madurai, dated 02.04.2019.



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For Appellant : M/s.K.R.Shivashankari

For R1-R3 : Mr.A.Senthil Kumar

For R4 : No Appearance

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.90 of 2018.

2. The mother and sisters of the deceased person have filed the claim petition seeking a claim of Rs.30,00,000/- (Rupees Thirty Lakh only) towards the death of their son, namely one Vijaya Perumal. According to the claimants, the deceased was travelling as a pillion rider in a two wheeler and the same was hit by a Maruti Omni Van coming from the opposite direction, in which the pillion rider had sustained injuries and passed away. The deceased was aged about 17 years and he was an Air Conditioner Mechanic at the time of accident.

3. The owner of the offending vehicle, namely Maruthi Omni van had remained *ex parte* and the insurance company of the said van had



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filed a counter contending that the driver of the Maruti Omni van did not possess a valid driving license at the time of accident. The insurance company has also taken a defence that the driver of the two wheeler was also not having a proper license at the time of the accident.

4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving of the Maruti Omni van owned by the 1st respondent in the claim petition and thereafter, proceeded to pass the award that the 1st and 2nd respondents, namely the owner and the insurance company are jointly and severally liable to pay the compensation amount of Rs.11,33,100/- (Rupees Eleven Lakh Thirty Three Thousand and One Hundred only). Challenging the said award, the insurance company has filed the present appeal.

5. According to the learned counsel appearing for the appellant, the insurance company has raised a specific plea in their counter that the driver of the offending vehicle namely the Maruti Omni van did not possess driving license at the time of accident. However, the said issue has not been considered by the tribunal. The learned counsel for the



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appellant had further pointed out that they have issued a notice to the driver of the offending vehicle under Exhibit R.2 and the acknowledgement card has been marked as Exhibit R.3. In the said letter, the insurance company has called upon the driver to produce his driving license. However, there was no response from the driver. The learned counsel appearing for the appellant had further pointed out that they have called for the document from the Regional Transport Officer under Exhibits C.1 and C.2 to impress upon the Court that the driver of the offending vehicle did not possess driving license at the relevant point of time. Therefore, according to the learned counsel appearing for the appellant, the insurance company had pleaded and proved before the tribunal that the driver of the offending vehicle was not possessing appropriate driving license at the time of accident. The tribunal has failed to consider the said defence and has imposed a joint and several liability upon the owner and insurance company

6. Though the owner of the vehicle has been served through Court, he had not appeared in person or through counsel.



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7. The insurance company has taken a specific stand before the tribunal that the driver of the offending vehicle, namely S.Ravindran was not having valid driving license at the time of accident. They have also marked as Exhibits R.2 and R.3 to show that the insurance company has issued legal notice to the concerned driver to elicit information relating to the driving license. However, there was no response from the driver. They have also produced the records from the Regional Transport officer to establish that the driver of the offending vehicle was not having any driving license at the time of accident. Despite all the pleadings and evidence that was let in by the insurance company, the tribunal has not taken into consideration these aspects and has proceeded to impose joint and several liability upon the insurance company also.

8. In view of the above said facts, I have found that the award of the tribunal in imposing joint and several liability upon the owner and the insurance company is not legally sustainable. It is a clear case where the vehicle has been driven by a driver without a proper license and hence, it amounts to violation of policy conditions. Therefore, the insurance company is directed to satisfy the award amount and recover the same from the owner of the offending vehicle, namely the Maruti Omni van.



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9. In view of the above said discussion, the award of the tribunal is modified to the effect that the appellant insurance company shall satisfy the award amount and recover the same from the 1st respondent in the claim petition by filing an execution proceedings in M.C.O.P.No.90 of 2018. In other respects, the award of the tribunal stands confirmed.

10. Accordingly, this Civil Miscellaneous Appeal stands allowed.

No costs.

09.03.2023

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

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To

- 1.The Motor Accident Claims Tribunal,
(VI Additional District Court),
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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