



C.M.A(MD)No.3 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.08.2023

Pronounced On : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.3 of 2018

and

C.M.P.(MD)No.24 of 2018

The Branch Manager,
National Insurance Co., Limited,
No.63, Rasi Plaza,
West Pradakshanam Road,
Karur 639 002.

: Appellant / 2nd Respondent

Vs.

1.Balammal

: Respondent/Petitioner

2.M.Naveen Kumar

: Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order, dated 27.03.2015 made in M.C.O.P.No.230 of 2013 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge/Full Additional Charge, Karur.



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For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.230 of 2013, dated 27.03.2015 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge/Full Additional Charge, Karur.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.1,86,500/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered, consequent to an accident occurred on 08.08.2012, challenged the liability mulcted on it.

3. The case of the claimant is that on 08.08.2012, when the injured was standing on the left side of Karur – Salem NH-7 near Manmangalam Bus Stop, a Hero Honda Motor cycle bearing Registration No.TN-47-AB-7471, which came in a rash and negligent manner dashed against the injured/claimant, that the accident was occurred only due to the rash and



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negligent driving of the two wheeler and that since the two wheeler owned by the second respondent, was insured with the appellant at the time of accident, both are jointly and severally liable to pay compensation.

4. The learned counsel for the appellant would submit that they are not disputing the finding of the Tribunal that the accident was occurred only due to the rash and negligent riding of the two wheeler rider, second respondent/first respondent and also the quantum of compensation awarded at by the Tribunal and that their only challenge is with respect to the liability mulcted on the insurer.

5. The learned counsel for the appellant would further submit that the rider of the insured vehicle was only holding learner's licence on the date of accident and he has chosen to obtain a permanent driving license only after the date of accident; that the Tribunal has failed to consider that the driver and the owner of the vehicle involved in the accident has not complied with the mandatory requirement of Rule 3 of Central Motor Vehicle Rules and that therefore, in view of the violation committed, the appellant/insurer is not liable to indemnify the owner of the vehicle.



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6. It is pertinent to note that the second respondent/first respondent, who is the owner cum driver of the vehicle involved in the accident had remained ex-parte. But during trial, at the instance of the appellant/insurer, the second respondent/first respondent has been examined as R.W.2 and in his evidence, he would admit that he was possessing learner's license/ Ex.R.2 at that time and that subsequently, he had obtained license to drive two wheeler/Light Motor Vehicles under Ex.R.3.

7. The learned counsel for the appellant would submit that the Tribunal has directed the appellant/insurer and the owner of the vehicle to pay compensation jointly and severally and that since the owner has violated the main policy conditions, the appellant/insurer is not liable for the claim and that therefore, the appellant may be directed to pay compensation to the claimant and permit them to recover the same from the owner of the vehicle.

8. At this juncture, it is necessary to refer the definition for Learner's License under Section 2(19) of Motor Vehicles Act :



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“ 2. *Definitions : (19) “learner's licence means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description.”*

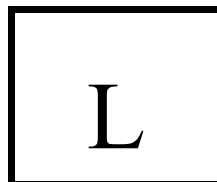
Rule 3 of Central Motor Vehicle Rules 1989 reads as follows :

3. *General.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—*

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:





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Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom: 5 Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).

9. Considering the above, it is clear that a person with a learner's license is expected to drive a vehicle only for the purpose of learning and while learning to drive a motorcycle, a holder of learner's licence must be accompanied by an instructor so as to make an effective driving licence to drive such a vehicle.

10. It is the mandate of Rule 3 that such an instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The main purpose of Rule 3 is to ensure the safety of not only the learner but also of other persons using the road. Therefore, a person possessing a learner's license, if not accompanied by an instructor as contemplated under the Rule 3(b) of the Central Motor Vehicles Rules 1989 would not be holding a valid licence.



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11. The Hon'ble Supreme Court in *National Insurance Company Limited Vs. Swaran Singh and others* reported in *2004 (3) SCC 297*, has held that in case of third party risks, the insurer has to indemnify the compensation amount payable to a third party and the insurance company may recover the same from the insured. The Hon'ble Apex Court in *Swaran Singh's* case has also considered the doctrine of pay and recovery, in case of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and it has been held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured.

12. Considering the legal position settled by the Hon'ble Supreme Court, this Court has no hesitation to hold that the Tribunal has committed an error in ignoring the evidence of violation of the terms and conditions of the policy by the insured and thereby failed to invoke the doctrine of pay and recovery and as such, the impugned award mulcting liability only on the appellant/insurer, is liable to be set aside. Consequently, this Court concludes that the appellant/insurer, after satisfying the award to the claimant, is entitled to recover the same from



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the owner of the vehicle. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/insurer is directed to pay the compensation awarded at by the Tribunal and recover the same from the second respondent/owner of the vehicle. The Appellant/Insurer is directed to deposit the award amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

NCC : Yes\No
Index : Yes\ No
Internet : Yes\ No
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To

- 1.The Motor Accident Claims Tribunal/
Principal Sub Judge/Full Additional Charge, Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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