



**C.M.A(MD)No.242 of 2021**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 10.10.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**C.M.A(MD)No.242 of 2021**

**and**

**C.M.P.(MD) No.2041 of 2021**

The United India Insurance Company Ltd.,  
Through its Branch Manager,  
Theni Town, Taluk,  
Theni District.

... Appellant

.VS.

1.C.Bose

2.P.Balakrishnan

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 15.07.2019 passed in MCOP.No.17 of 2013 on the file of the Motor Accidents Claims Tribunal/Sub Court, Theni.

For Appellant :Mr.C.Karthik

For R1 :Mr.M.Ponniah

For R2 : No appearance



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## **JUDGMENT**

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This Civil Miscellaneous Appeal is filed against the award passed by the Motor Accidents Claims Tribunal/Sub Court, Theni, in MCOP.No. 17 of 2013 dated 15.07.2019.

2.The appellant/second respondent/Insurance Company challenges the award only on the ground that the Driver of the vehicle bearing Reg.No.TN 67 7839, Mahindra Van, Radhakrishnan, had no driving licence at the time of accident. Despite this fact was specifically pleaded in the counter filed by the respondents and by examining R.W1 and producing Ex.R1 to show that Radhakrishnan had no driving licence, the Tribunal recorded a wrong finding and fixed the liability entirely on the appellant/second respondent on the ground that the FIR and final report do not indicate that the Driver, Radhakrishnan, had no driving licence. Thus, instead of directly fixing the liability on the Insurance Company, he prayed that the liability may be fixed on the owner of the vehicle with a direction to pay the compensation award by the Insurance Company and then, recover it from the owner.



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3.Despite printing the name of the second respondent, there is no appearance for him.

4.The learned counsel for the first respondent submitted that as per the evidence of R.W1, it was possible that the Driver, Radhakrishnan could have got the driving licence from different addresses and from different Regional Transport Office and therefore, it cannot be conclusively held that the Driver, Radhakrishnan, had no driving licence.

5.Considered the rival submissions and perused the records.

6.It is seen from the records produced and the submissions of the learned counsel appearing for the parties that on 17.01.2010 at about 08.00 pm., the claimant was riding his cycle near Karuppasamy temple on the left side of the road. At that point of time, the Driver of the vehicle bearing Reg.No.TN 67 7839, Radhakrishnan, had driven the Van from south to north in a rash and negligent manner and hit against the claimant. As a result of which he sustained injuries and thus, he filed the claim petition.



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7.From the submissions of the learned counsel appearing for the parties, there is no dispute with regard to the manner in which the accident had happened and that the accident happened because of a rash and negligent driving of the Van bearing Reg.No.TN 67 7839 by the Driver, Radhakrishnan.

8.The learned counsel appearing for the appellant brought to the notice of this Court to the motor vehicle inspection report to show that the Driver, Radhakrishnan had not produced the driving licence at the time of inspection of the vehicle. He has also brought to the notice of this Court to Ex.R1 to show that Radhakrishnan was not given the driving licence by the Regional Transport Officer, Madurai (South). Thus, it is *prima facie* established from the oral and documentary evidence produced in this case that the Driver, Radhakrishnan, who had driven the Van bearing Reg.No.TN 67 7839 in a rash and negligent manner, had no driving licence at the time of accident. The only person, who can contest the claim, is the owner. The owner of the vehicle was set *ex parte* before the Tribunal and he did not appear before this Court also.



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9. In the said circumstances, this Court has no option except to conclude that the Driver, Radhakrishnan, had no driving licence at the time of causing the accident by driving the Van bearing Reg.No.TN 67 7839 in a rash and negligent manner. It is certainly violation of policy conditions.

10. The Hon'ble Apex Court on several occasions in several judgments held that in cases, where the Drivers of the vehicles, who committed the accident, had no driving licence, the Insurance Company is liable to pay the compensation amount to the victim and then entitled to recover it from the owner.

11. In the judgment of this Court in ***Govindasamy and another Vs. Ramamurthy and other*** reported in ***2023 (1) TN MAC 739***, it has been held as follows:-

*“7. Based on the oral and documentary evidence adduced before the Trial Court, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the 1<sup>st</sup> respondent's Maruti Suzuki Swift Desire car. Based on the*



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*Ex.R1 and R4, the Trial Court held that on the date of the accident, the vehicle was insured with the 2<sup>nd</sup> respondent / Insurance Company. Based on Ex.R1, the Trial Court has held that the driver of the Maruti Suzuki Desire car / the offending vehicle does not possess a valid license on the date of the accident. Accordingly, following the judicial pronouncement of the Hon'ble Supreme Court, the Tribunal has held that the Insurance Company has to pay the compensation and thereafter to recover the same from the owner of the vehicle. In the absence of any challenge to the said finding, the said finding of the Trial Court is hereby confirmed.”*

12.In the Judgment of the Division Bench of this Court in ***Mallika and others Vs. Periyasamy and another*** reported in **2023 (1) TN MAC 557 (DB)**, it has been held as under:-

*“10. We have considered the rival submissions. We are unable to accept the contention of the learned counsel for the respondents as regards the license. A perusal of Ex.P4 would show that the driver of the lorry had only license to drive light motor vehicle and not the heavy vehicle. Therefore, there is a breach of policy condition by the insured. Technically the Insurance Company is not liable to satisfy the award. However, in view of Section*



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*149(4), the Tribunal ought to have given liberty to the Insurance Company to satisfy the award and recover the amount from the owner of the vehicle. Denial of such recovery to the Insurance Company in our considered opinion is clearly erroneous. We therefore conclude that the Insurance Company is liable to satisfy the award. It will however have a right of recovery, from the owner of the vehicle to the accident, of the liability that accrues to it under the award.”*

13.Following these judgments, the order that the appellant/Insurance Company is liable to pay compensation on behalf of the second respondent is set aside and modified that the appellant is liable to pay compensation to the first respondent/claimant. However, the appellant can recover it from the second respondent/owner.

14.In the result, this Civil Miscellaneous Appeal is allowed and the appellant/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the second respondent/owner of the vehicle. The appellant/Insurance Company shall deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, to the credit of



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MCOP.No.17/2013 on the file of the Motor Accident Claims Tribunal/Sub Court, Theni within a period of eight weeks from the date of receipt of a copy of this order. On making such deposit, the claimant is permitted to withdraw the entire amount by filing a formal application seeking permission. No costs. Consequently, connected Miscellaneous Petition is closed.

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

**10.10.2023**

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To

The Subordinate Judge,  
Theni



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**G.CHANDRASEKHARAN,J.**

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