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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.946 of 2021

New India Assurance Co. Ltd.,
No.17, For Main Road,
Shevapet, Salem.

.. Appellant

Vs.

1. Thirumathi Dilshat
2. Sowriammal @ Pottiammal
3. P.Palanisamy
4. R.Umarani
5. Saraladevi

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act-1923, to set aside the order dated 17.03.2020 in E.C.No.340 of 2013 on the file of the Commissioner, Workmen's Compensation (Deputy Commissioner of Labour) Salem.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : RR1 to 5 – No appearance

J U D G M E N T

The Insurance company is the appellant herein has filed this appeal under [Section 30](#) of the Employee's Compensation Act, 1923, challenging the liability of the Insurance Company, in respect of the award passed in



E.C.No.340 of 2013.

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2.The respondents 1,2 and 5 herein are the claimants claiming compensation for the death of one Devakumar, who was employed by the respondents 3 & 4 herein, owner of the vehicle. The appellant, who is the insurer of the vehicle, specifically raised a plea that the claimant is not having any valid driving licence to drive the vehicle, owned by the respondents 3 & 4 herein, at the time of accident. Hence, when the owner of the vehicle has allowed the person to drive the vehicle, who is not having driving licence, the Insurance Company has been fastened with the liability and also relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal Numbers 7220-7221/2011 in Beli Ram-vs- Rajinder Kumar & Another. When the Insurance Company raises a plea that the driver of the vehicle does not possess valid driving licence at the time of accident, it is for the owner of the vehicle to prove that at the time of accident, the driver had valid driving license to drive the vehicle, either by producing the original or Xerox copy of the same, at the time of the trial before the Labour Commissioner.



3. Heard the learned counsel for the petitioner and perused the materials available on record. Since notice has been served on the respondents, no one appeared on their behalf.

4. The Labour Commissioner records reveal the fact that the respondent 3 & 4, owner of the vehicle, was set ex-parte and hence, nothing was produced on their side to establish and prove the fact that the deceased is having valid driving license at the time of accident. Therefore, this Court find that the Labour Commissioner, has erroneously fixed the burden upon the Insurance Company to disprove that at the time of accident the driver of the vehicle does not possess valid driving licence.

5. The judgment of the Hon'ble Supreme Court in the case of *Beli Ram-vs- Rajinder Kumar & Another reported in 2020(2)TNMAC 445(SC)*, wherein the Hon'ble Apex Court has held that when the driver of the vehicle does not possess valid driving licence, to drive the vehicle at the time of accident, the claim under the Workman Compensation Act, cannot be fastened upon the Insurance Company, if at all the owner has to pay the same.



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6. It is represented by the learned counsel appearing for the appellant/Insurance Company that the entire award amount has already been deposited to the credit of the claim petition. In view of the fact that as per this judgment, the appellant/Insurance Company is exonerated from its liability to pay compensation to the claimant, the Commissioner is directed to refund the award amount so deposited to the appellant/Insurance Company with proportionate accrued interest, on filing of necessary application. The owner of the vehicle is liable to pay the compensation and the claimant shall proceed against the owner of the vehicle following the due process of law.

7. .With the above observations, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

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Index : Yes

Speaking Order : Yes



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To
Commissioner, Workmen's Compensation (Deputy Commissioner of
Labour) Salem.



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M.DHANDAPANI,J.

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