IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2270 of 2024
and
C.M.P.No.17580 of 2024

The New India Assurance Company Ltd.,
Branch Office(721801),
39C, Byepass Road, Dharmapuri Town,
Dharmapuri Taluk & District – 636 701. ... Appellant /2nd respondent

Vs.

1.Sivasathya
2.Chinnammal
3.Dharmalingam ... Respondents / Petitioners No.1 to 3
4.A.Tamizharasan ... 4th Respondent / 1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 22.09.2023 made in M.C.O.P.No.388 of 2021 on the file of Court of Exclusive Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr.K.Vinod

For Respondents 1 to 3 : Mr.S.Sathyaseelan
For 4th Respondent : No Appearance

JUDGMENT

(The Judgment of the Court was made by Mrs.R.Kalaimathi, J.,)

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the Award dated 22.09.2023 passed in M.C.O.P.No.388 of 2021 on the file of Motor Accident Claims Tribunal, Dharmapuri, for a change.

2. Upon consideration of the oral and documentary evidences, the Tribunal has granted compensation for an amount of Rs.27,29,500/-.

3. Heard Mr.K.Vinod, learned counsel appearing for the appellant / Insurance Company and Mr.S.Sathyaseelan, learned counsel appearing for the respondents No.1 to 3 / claimants.

4. At trial, on the claimants' side, three witness have been examined and 31 documents were marked. On the side of the 2nd respondent (Insurance Company), the staff of Regional Transport Office (R.T.O.) has been examined as RW1. Ex.R2 is the copy of Motor Vehicle Inspector's Report pertaining to the erred lorry (Reg.No.TN-23-A-4567).

5. The learned counsel Mr.K.Vinod, appearing for the

appellant/Insurance Company would vehemently argue that apart from other contentions, the driver of the 1st respondent's vehicle had no valid driving licence. Therefore, having breached the policy conditions, the Insurance Company is not liable to pay compensation.

6. To substantiate the above said details, on the side of the 2nd respondent, staff of Dharmapuri-R.T.O., RW1 (K.Sivasakthi) would depose that Ex.P5 - copy of the driving licence of the lorry driver was issued by their office and as regards the nature of driving licence, she would state that Ex.P5 is a driving licence to drive only light motor vehicles. Whereas, in Ex.R2, copy of Motor Vehicle Inspector Report, pertaining to the erred vehicle(lorry) in column No.8, it has been mentioned as lorry driven without driving licence. As regards the nature of erred vehicle is concerned, it is tanker lorry and no doubt it is heavy goods vehicle. Therefore, it is made clear that through the evidence of RW1, the driver of the 1st respondent vehicle namely tanker lorry driver drove the vehicle at the relevant point of time, he was in possession of L.M.V. D.L., and he was permitted to drive light motor vehicle and not heavy motor vehicle. As regards the above said issue, it is useful to refer the observations made by the Hon'ble Supreme Court in *Shamanna v. Oriental Insurance Company Ltd.,* reported in *(2018)*

9 SCC 650, wherein, it has been held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle.

7. In the following decisions in :

1) National Insurance Co.Ltd., v. Swaransingh and others reported in 2004 (3) SCC 297.

2) Oriental Insurance Co. Limited v. Nanjappan and others reported in (2004) 13 SCC 224.

3) Kempaiah and Others v. S.S.Murthy and Another reported in (2018) 12 SCC 706.

4) Parminder Singh v. New India Assurance Company Limited and Others reported in (2019) 7 SCC 217.

the Hon'ble Supreme Court has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited v. Swaran Singh and others reported in (2004) 3 SCC 297 was followed in the decision in Kempaiah and others v.

S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

8. The Apex Court has concluded that as evidence indicated that drivers of offending vehicle drove the vehicle without valid driving licence, the respondent/Insurance Company is directed to pay the victim and then recover the same from owner of offending vehicle.

9. Though the Insurance Company has taken pains to prove the above said details made in the counter through RW1, the Tribunal has fastened the liability on the 2nd respondent/Insurance Company. In our considered opinion, this portion of the order in view of the legal position as discussed supra, has to be interfered with. As the driver of the erred vehicle namely tanker lorry driver drove the vehicle at the relevant point of time only with driving licence to drive light motor vehicle(Ex.P5), is a violation of policy condition. Therefore, the Insurance Company is ordered to pay the compensation at the first instance and to recover the same from the owner of the erred vehicle at a later point of time.

10. In the result,

(i) The Civil Miscellaneous Appeal stands Allowed.

(ii) The Appellant / Insurance Company is directed to deposit the compensation amount awarded by the Tribunal i.e., **Rs.27,29,500/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.388 of 2021 on the file of Court of Exclusive Motor Accident Claims Tribunal, Dharmapuri, within a period of eight weeks from the date of receipt of a copy of this Judgment and then recover the same from the owner of the tanker lorry bearing Reg.No.TN-23-A-4567.

(iii) On such deposit being made, the Claimants are permitted to withdraw the same along with interest and costs (less the amount if any already withdrawn), as per the apportionment made by the Tribunal, by making necessary cheque application before the Tribunal. No costs. Consequently, connected civil miscellaneous petition is closed.

(J.N.B. J.,) (R.K.M.J.,)
12.09.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case:Yes / No
ssn

J.NISHA BANU, J.,
and
R.KALAIMATHI.J.,

ssn

To

1. The Motor Accidents Claims Tribunal,
   Dharmapuri.

2. The Section Officer,
   V.R Section,
   High Court, Madras.

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and
C.M.P.No.17580 of 2024

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