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C.M.A.No.3639 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3639 of 2021

1.Kasthuri
2.Minor Harikrishnan
(Minor petitioner is represented
by his natural guardian / next friend
mother 1st petitioner Kasthuri)
3.Devi

... Appellants

Vs.

Muniyappan (Died)

1. Shanthi
2.Minor Sujee
3.Minor Ammu
(Respondent Nos.2 and 3 being minors are
represented by their next friend / 2nd respondent Mother)
4.Rukkamma
5.Chinnannan

6.The Divisional Manager,
IFFCO TOIKO General Insurance Company Limited,
Office at No.145/131, Sahas Embassy Ground Floor,
Nelson Manikkam Road,
Metha Nagar,
Chennai - 600 029.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 08.04.2021 made in M.C.O.P. No.240 of 2015 on the file of the Motor Accident Claims



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Tribunal, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore.

For Appellants : Mr.M.Sivakumar

For Respondents : Mr.S.Arun Kumar
for R6

No Appearance - R1 to R5

JUDGMENT

This appeal has been filed by the claimants, aggrieved by the decision of the Tribunal, having not granted pay and recovery rights to them. Under the impugned award, no pay and recovery rights have been granted to enable the appellants / claimants to claim the award amount from the 6th respondent / Insurance Company. The 6th respondent / Insurance Company has not disputed the fact that the accident was caused by a vehicle insured by them and the negligence aspect of the accident as per the finding of the Tribunal. The driver of the vehicle insured with the 6th respondent was not possessing a valid driving license at the time of the accident.

2. It is settled law that in case of policy violation, pay and recovery rights will have to be granted to enable the claimant to recover the award amount from the Insurance Company, who in turn can recover the same from the insured. However, as seen from the impugned award, the Tribunal



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has failed to grant pay and recovery rights to the appellants / claimants, but has passed the award only as against the owner of the vehicle (Insured).

When the evidence is clear that the rider of the vehicle insured with the 6th respondent did not possess a valid driving license at the time of the accident and there is a valid insurance policy issued by the 6th respondent, necessarily pay and recovery rights to the appellants / claimants ought to have been granted by the Tribunal. But, under the impugned award, the same has erroneously not been granted.

3. For the foregoing reasons, the impugned award passed by the Tribunal is modified by granting pay and recovery rights to the appellants / claimants to enable them to claim the award amount from the 6th respondent / Insurance Company as per the impugned award and the 6th respondent Insurance Company is granted the right to recover the said amount paid to the claimants by proceeding against the legal representatives of the owner of the vehicle viz., the respondent Nos.1 to 5, in the pending execution petition.

4. The 6th respondent / Insurance Company is directed to deposit the



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award amount after deducting the amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of M.C.O.P. No.240 of 2015 on the file of the Motor Accident Claims Tribunal, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore, within a period of **six weeks** from the date of receipt of a copy of this judgment.

5. The appellants /claimants are permitted to withdraw the said amount, once it is deposited by the 6th respondent/Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.240 of 2015 to the bank account of the appellant directly through NEFT / RTGS, within a period of **one week** thereafter. No costs.

04.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accident Claims Tribunal, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore.

2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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