BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.1673 & 1674 of 2013
and
M.P.(MD) Nos.2 & 2 of 2013

The New India Assurance Company Limited,
Represented by its Branch Manager,
No.66, W.B.Road,
Trichy -620 008. ... Appellant in both C.M.As.

Vs.

1.A.Kulandai
S/o.Arputham ... 1st respondent in C.M.A.(MD) No.1673/13

2.A.Prakash
S/o.Amaladoss ... 1st respondent in C.M.A.(MD) No.1674/13

3.M.Marimuthu
S/o.Mani ... 2nd respondent in both C.M.As.

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the common Judgment dated 30.11.2012 passed by the Motor Accident Claims Tribunal [Chief Judicial Magistrate Court], Karur, in M.C.O.P.Nos.102 & 103 of 2011.

For Appellant
in both C.M.As. : Mr.J.S.Murali

For R1 in both
C.M.As. : Mr.P.Ganapathi Subramanian

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COMMON JUDGMENT

The instant appeals have been filed by the Insurance Company, on the ground that the owner of the insured vehicle had violated the terms of the contract of insurance by allowing the driver, who did not possess the driving licence to drive the heavy motor vehicle, and hence, they ought to have been exonerated.

2. Since the finding on negligence and the quantum of compensation is not under challenge, the facts leading to the filing of the claim petition are not necessary for the disposal of this appeal.

3. The learned counsel for the appellant submitted that the driving licence of the driver, marked as Ex.P14, would show that it expired on 14.04.2011 and was renewed only on 06.07.2011, with validity from 06.07.2011 to 05.07.2014; and that the accident took place on 27.06.2011,

and therefore, at the time of the accident, the driver of the insured vehicle did not have a valid driving licence, and hence, the appellant ought to have been given liberty to pay and recover the compensation from the owner of the insured vehicle.

4. The learned counsel for the first respondent/claimant in both the appeals submitted that the award of the Tribunal is just and reasonable and no interference is called for.

5. The second respondent, the owner of the insured vehicle, remained *ex parte* before the Tribunal. Though the notice was served on the second respondent in the condone delay petition, he has not chosen to enter appearance.

6. The only point for consideration in the instant appeal is whether the appellant should be given liberty to pay and recover the compensation from the second respondent, the owner of the insured vehicle.

7. On perusal of the driving licence of the driver of the insured vehicle (Ex.P14), it is seen that the driver of the insured vehicle had

driving licence till 14.04.2011. There is evidence to show that the licence was renewed once again on 06.07.2011. Therefore, on the date of the accident, the driver of the insured vehicle did not have a valid driving licence. This is violation of the terms of the contract of insurance.

8. In such circumstances, this Court is of the view that it would be appropriate to direct the appellant to satisfy the award amount at the first instance and thereafter recover the same from the owner of the insured vehicle, the second respondent herein, as per the guidelines issued by the Hon'ble Supreme Court in the case of **Nanjappa** Vs. **State of Karnataka**, reported in 2015 (1) SCC 550. The award under challenge is confirmed in all other aspects.

C.M.A.(MD) No.1673 of 2013:

9. The appellant, Insurance Company, is directed to deposit the compensation of Rs.75,402/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and proportionate costs, after deducting the amount already, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

10. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

C.M.A.(MD) No.1674 of 2013:

11. The appellant, Insurance Company, is directed to deposit the compensation of Rs.1,35,488/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and proportionate costs, after deducting the amount already, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. On such deposit, the first respondent/claimant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

13. The appellant, Insurance Company, is at liberty to recover the amount from the second respondent, owner of the insured vehicle, as stated above.

14. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Karur, Karur District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.

SUNDER MOHAN, J.

JEN

C.M.A.(MD) Nos.1673 & 1674 of 2013
and M.P.(MD) Nos.2 & 2 of 2013

10.09.2024