



C.M.A.(MD) No.874 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.874 of 2024

and

C.M.P.(MD)No.9399 of 2024

The National Insurance Co. Ltd.,
No.24, Kamaraj Bazaar Road,
Bodinayakanur,
Theni.

... Appellant

Vs.

1.R.Balu,
2.P.Chellapandi.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree dated 17.11.2022 passed in M.C.O.P.No.56 of 2018 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Theni.

For Appellant : Mr.R.Rajamani

For Respondents

for R1 : No appearance
for R2 : Ms.K.Abiya



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JUDGMENT

The instant appeal has been filed, questioning the finding on liability.

2. The only ground raised by the learned counsel for the appellant is that the rider of the insured offending vehicle did not have a valid licence and hence, the Tribunal ought to have directed the appellant to pay the compensation and recover the same from the second respondent herein.

3. Since the quantum of compensation and the entitlement of the claimant to receive the compensation are not in dispute, the facts leading to the filing of the claim petition may not be necessary for deciding the issue involved in this appeal.

4. The learned counsel for the appellant/Insurance Company submitted that they had marked the letter Exs.R1 and Inspection Report in Ex.R2 to show that the rider of the offending vehicle did not have a valid licence.



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5. The learned counsel for the second respondent/owner of the two wheeler submitted that he remained *ex parte* before the Tribunal. However, the learned counsel submitted that the rider had a valid licence.

6. The only point for consideration in the instant appeal is '*whether the Tribunal ought to have directed the appellant to pay and recover the compensation from the second respondent herein?*'

7. From the documents relied upon by the learned counsel for the appellant/Insurance Company in Exs.R1 and R2, it is seen that they had taken steps to ascertain as to whether the rider had a valid licence and proved that the rider did not have a valid licence. The second respondent, namely, the owner of the vehicle, remained *ex parte* before the Tribunal. Even now, the second respondent is unable to produce the licence of the rider of the offending vehicle. Hence, this Court is of the view that the appellant, by the documents Exs.R1 and R2, had established that the offending vehicle was ridden without a valid licence.

8. The Hon'ble Supreme Court in ***Pappu and others vs. Vinod Kumar Lumba reported in 2018 ACJ 690*** held that unless the owner of



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the vehicle has furnished the details of the driver and produced a copy of the driving licence, he cannot be exonerated of his liability. However, in that case to subserve the ends of justice, the insurer was directed to satisfy the award amount at the first instance with a liberty to recover the same from the owner. Hence, this Court is of the view that since the appellant had established that there was a violation of the policy conditions as the rider did not have a valid licence, the appellant can be directed to pay the compensation at the first instance and thereafter, recover it from the second respondent herein in accordance with law.

9. It is noticed that by an earlier order dated 21.08.2024 of this Court, the appellant was directed to deposit the entire compensation amount, and the claimant was also permitted to withdraw the same.

10. In view of the above, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:

1.Motor Accidents Claims Tribunal cum Chief Judicial Magistrate,
Theni.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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