



C.M.A(MD)Nos.386 & 387 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.386 & 387 of 2018

and

C.M.P(MD)Nos.4906 & 4907 of 2018

The Manager,
Iffco-Tokio General Insurance Company Limited,
4/1044, Kovai Main Road,
Karur.

... Appellant/2nd Respondent
(In Both the appeals)

Vs.

1.Minor S.Swetha,
Represented by her guardian and
next friend her father,
C.Saravanan.

... 1st Respondent/Petitioner
in C.M.A(MD)No.386 of 2018

1.M.Chandrasekaran

... 1st Respondent/Petitioner
in C.M.A(MD)No.387 of 2018

2.V.Lakshmi

... 2nd Respondent/1st Respondent
(In Both the appeals)

PRAYER in C.M.A(MD)No.386 of 2018: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 03.02.2018 passed in M.C.O.P.No.104 of 2015 on the file of the Motor Accident Claims Tribunal Judge / Chief Judicial Magistrate of Karur by allowing this appeal.



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PRAYER in C.M.A(MD)No.387 of 2018: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 03.02.2018 passed in M.C.O.P.No.105 of 2015 on the file of the Motor Accident Claims Tribunal Judge / Chief Judicial Magistrate of Karur by allowing this appeal.

In Both the Appeals:

For Appellant : Mr.V.Sakthivel

For R-1 : Mr.K.Balasubramani
for caveator

For R-2 : No appearance

COMMON JUDGMENT

C.M.A(MD)Nos.386 and 387 of 2018 have been filed by the Insurance Company challenging the award passed in M.C.O.P.Nos.104 and 105 of 2015 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Karur, primarily on the ground that, there is a violation of policy conditions and the Tribunal has not ordered pay and recovery.

2. The claimant in both these claim petitions were travelling in a two-wheeler. Another two-wheeler belonging to the first respondent in the claim petition came in a rash and negligent manner and dashed



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against the two-wheeler, in which the injured claimants have travelled.

Both the claimants have sustained injuries and have filed independent claim petitions in M.C.O.P.Nos.104 and 105 of 2015 claiming compensation. The Tribunal has proceeded to award a sum of Rs.2,83,950/- in the case of minor in M.C.O.P.No.104 of 2015 and a sum of Rs.39,400/- in the case of another claimant, namely, M.Chandrasekaran in M.C.O.P.No.105 of 2015. Challenging both these awards, the present appeals have been filed.

3. According to the learned Counsel appearing for the claimant, the rider of the offending vehicle was not having valid and effective driving license on the date of the accident. Though the said issue was raised before the Tribunal and evidence was let in by examining the concerned RTO official, the Tribunal has proceeded to reject the said contention and passed an award mulcting joint and several liability upon the owner of the offending vehicle as well as the Insurance Company. He further contended that though the owner of the vehicle was arrayed as the first respondent in both the claim petitions, she has chosen to remain *ex parte*. Even in the present appeals, the owner has chosen to remain *ex parte*. Hence, he contended that an order of pay and recovery may be



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passed, in view of the violation of the policy conditions, so that after satisfying the award, he could recover the amount from the insured person.

4. Per contra, the learned Counsel appearing for the respondent herein prayed for sustaining the award passed by the Tribunal.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. The primary contention of the learned Counsel appearing for the appellant is that, since the driver of the offending vehicle which was insured with the appellant Insurance Company was not having valid and effective driving license on the date of the accident, an order of pay and recovery ought to have been passed by the Tribunal in both the claim petitions. He pointed out that the Insurance Company has examined the concerned RTO official as R.W.2. In the present case, the owner of the offending vehicle, namely, the insured had chosen to remain *ex parte* before the Tribunal as well as before this Court. No effort has been taken on the side of the insured person to produce any records before the Court



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that the driver of the offending vehicle was having valid and effective driving license on the date of accident.

7. The learned Counsel appearing for the appellant had relied upon the judgment of this Court reported in ***CDJ 2000 MHC 744 [K.Venkatanarayanan Vs. Balaji]***, wherein this Court has held that, when the owner has chosen to remain *ex parte* and has not chosen to adduce evidence to the effect that he had entrusted the vehicle to a driver having a valid license, in such an event it could be presumed that the driver was not having valid driving license at the relevant point of time and it could also be presumed that there is violation of policy conditions.

8. In view of the above said deliberations, the award of the Tribunal in mulcting joint and several liability upon the appellant Insurance Company is hereby set aside. The appellant Insurance Company is directed to satisfy the award and is at liberty to recover the same from the second respondent in the appeals, who is the owner of the offending vehicle. In other respects, the award of the Tribunal is hereby confirmed.



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9. Both the Civil Miscellaneous Appeals stand allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

25.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal Judge /
Chief Judicial Magistrate,
Karur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)Nos.386 & 387 of 2018

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