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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 11 of 2022

and

C.M.P(MD)Nos.71 & 11093 of 2022

The National Insurance Company Limited,
Bodinayakanoor Branch,
Through its Branch Manager,
Kamarajar Bazaar,
Bodinayakanoor (Reshman Store's upstairs)

... Appellant

Vs.

1.A.Gurusamy

2.B.Venkatesan

... Respondents

PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Judgment and Decree in M.C.O.P.No.46 of 2014 dated 27.08.2020, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Theni and allow the appeals with costs.

For Appellant : Mr.J.S.Murali

For Respondent No.1 : Mr.R.Thangapandian

JUDGEMENT

The Insurance company has preferred this appeal to set aside the Judgment and Decree in M.C.O.P.No.46 of 2014 dated 27.08.2020, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Theni.



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2. It is a case of injury. The injured is a pillion rider. The contention of the insurance company is that the driver of the car was not possessing valid driving license. Admittedly, the driving license was issued to the driver but the same was expired on 13.06.2013 which was renewed only on 28.12.2015 and the driver did not possessing valid driving license at the time of accident i.e., on 06.07.2014.

3. Following the Judgment of the Hon'ble Supreme Court in the case of *Beli Ram Vs. Rajender Kumar and another, reported in 2020(2) TNMAC 445*, this Court is inclined to pass “Pay and Recovery” order. In the present case, since at the time of accident the driver of the vehicle is not having valid driving license the insurance company is not liable to pay any compensation and only the owner of the vehicle is liable to pay.

4. Accordingly, the compensation of Rs.1,37,000/-granted by the Tribunal is hereby confirmed and the Insurance company is directed to deposit the same, within a period of 8 weeks from the date of receipt of a copy of the order with 7.5% interest along with costs, less the amount already deposited, if any. After depositing, the Insurance company is directed to recover the same from the owner of the vehicle by filing execution petition without filing suit. On such deposit being made, the claimant is permitted to withdraw the same.



5. With these modifications, this Civil Miscellaneous appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

05.03.2024

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

To

1.The Motor Accident Claims Tribunal,
Subordinate Court,
Theni.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Judgment made in
C.M.A(MD)No. 11 of 2022**

05.03.2024