



C.M.A.(MD) No.1311 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1311 of 2024

and

C.M.P.(MD)No.14086 of 2024

Shriram General Insurance Co. Ltd.,
No.10003/E-8,
RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan 302 022.

... Appellant

Vs.

1.Manickam,
2.Maharajan,
3.Vanumamalai,
4.Indira,
5.Subbulakshmi,
6.Nambi Nachiyar,
7.Balasubramanian.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 01.08.2011 passed in M.C.O.P.No.737 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court/Fast Track Court-I, Tirunelveli.



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For Appellant : Mr.S.Srinivas Raghavan

For Respondents : Dispensed with

J U D G M E N T

The appeal has been preferred by the insurance company challenging the finding on liability.

2. The respondents 1 to 6 herein had filed a claim petition stating that while the deceased was riding his motor cycle, a tractor insured with appellant came in a rash and negligent manner and dashed against the deceased, as a result of which the deceased sustained fatal injuries.

3. The owner of the vehicle remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that the tractor driver did not have a valid licence; and that since there was a violation of the policy condition, the appellant is not liable to pay any compensation.



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5. The Tribunal, after taking into consideration the oral and documentary evidence, held that there was a violation of policy condition inasmuch as the driver of the tractor did not have a valid licence and directed the appellant to pay compensation at the first instance and recover it from the owner of the tractor.

6. In view of the order this Court proposes to pass, notice to the respondents is dispensed with.

7. The only point for consideration in the instant appeal is '*whether the finding of the Tribunal directing the appellant to pay and recover the compensation is justified?*'

8. The finding on negligence and the quantum of compensation is not in dispute. According to the appellant, since the driver did not have a valid licence, it would amount a fundamental breach and there cannot be given a direction to pay and recover. The appellant had established the fact that the driver of the insured vehicle did not possess a valid licence by examining R.W.1-RTO, who issued a letter-Ex.R1 to that effect. It is well settled that in case of violation of policy condition, namely, that driver of



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the insured vehicle did not possess a valid licence, the insurer can be directed to pay and recover the compensation from the owner of the vehicle. Therefore, the direction of the Tribunal to the appellant to pay the compensation at the first instance and thereafter recover it from the owner cannot be faulted. Hence, the award of the Tribunal deserves to be confirmed.

9. The appellant/Insurance Company is liable to pay **Rs.3,20,000/-** (Rupees Three Lakhs and Twenty Thousand only), at the first instance, together with interest at 7.5% p.a. from the date of the claim petition till the date of realization and proportionate costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order and thereafter, recover it from the owner of the vehicle/seventh respondent by following due procedure of law.

10. On such deposit, the respondents 1 to 6/claimants are permitted to withdraw their share amount with interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.



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11. In the result, this Civil Miscellaneous Appeal is dismissed, without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

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

To:

1. The Motor Accidents Claims Tribunal, Additional District and Sessions Court/Fast Track Court-I, Tirunelveli.

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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