



C.M.A.No.776 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.08.2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.776 of 2023

and

C.M.P.No.7137 of 2023

The Oriental Insurance Co. Ltd.,
Third Party Claim Office,
New No.116, Old No.115,
Prakasam Salai, Broadway,
Chennai - 600 001.

...Appellant

Vs.

1.A.Peter Francis,
S/o.Arokiaraj,
No.123/1, Saragam,
Kandiyankuppam, Adivaraganallur,
Sri Adivaraganallur,
Cuddalore - 608 703.

2.A.Krishnan,
No.11/7, Melavasal,
Srirangam, Trichy - 620 006.

...Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 16.11.2022 passed in M.C.O.P.No.7610 of 2018 on the file of the Motor Accidents Claims Tribunal (III court of Small Causes) at Chennai.



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For Appellant : Mr.M.Krishnamoorthy

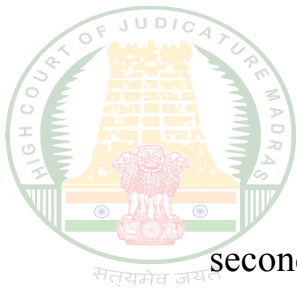
For Respondents : Mrs.P.T.Saleem Fathima - R1
R2 - Left

J U D G M E N T

Challenging the award passed by the Tribunal, the appellant/Insurance Company preferred this Civil Miscellaneous Appeal.

2. The learned counsel for the appellant / Insurance Company submitted that at the time of accident, the rider of the two wheeler did not possess a valid licence to drive the insured vehicle. Therefore, the Tribunal ought to award pay and recovery instead of fixing the entire liability on the appellant, as such is illegal and hence, he prayed for pay and recovery against the owner of the vehicle / 2nd respondent.

3. The learned counsel for the first respondent submitted that admittedly at the time of the accident there was no proof on the side of the first respondent that the rider of the insured vehicle had valid licence to drive the vehicle. As per the M.V.I. Report, the licence of the rider of the two wheeler has not been produced. The owner of the vehicle, namely the



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second respondent, has also not appeared before the Tribunal by producing the valid documents to that effect. Therefore, on the date of the accident, the owner of the vehicle failed to establish that the rider of the two wheeler possessed with a valid licence. Therefore, it is a clear violation of the policy conditions as rightly submitted by the learned counsel for the appellant. Therefore, he prayed that the pay and recovery sought by the appellant be ordered as against the second respondent, owner of the vehicle.

4. On considering the submissions of both sides and upon perusal of the records, it is seen that the Tribunal awarded compensation by fixing negligence on the part of the appellant / Insurance Company and not on the part of the second respondent (owner of the vehicle). It was found that the vehicle did not possess a valid licence at the time of the accident. Therefore, the entire liability was fastened on the second respondent/owner of the vehicle and not on the Insurance Company.

5. Therefore, this Court is of the opinion that the liability fastened solely upon the Insurance Company is liable to be modified. On the date of



the accident, the vehicle was insured with the appellant/Insurance Company.

Accordingly, the Insurance Company is directed to pay the compensation amount to the claimant, with liberty to recover the said amount from the second respondent (owner of the vehicle), under the principle of “pay and recovery.”

6. The appellant / the Oriental Insurance Company Limited, is directed to deposit the amount awarded by the Tribunal, i.e., Rs.1,26,200/- (Rupees One Lakh Twenty Six Thousand Two Hundred only), together with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Insurance Company is at liberty to recover the same from the second respondent / owner of the vehicle under the same cause of action.

- i. On such deposit being made, the first respondent / claimant is at liberty to withdraw the same as per the manner known to the law.
- ii. The first respondent / claimant is not entitled to claim any interest for the delay, if any, in filing this appeal.



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7. In view of the above, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking order / Non-Speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Motor Accidents Claims Tribunal
(III Court of Small Causes), Chennai.

2.The Section Officer,
VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.,

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