



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

Coram:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1213 of 2014

1.S.Pappathi
2.S.Muthu Krishnan
3.S.Muthu Kumar
4.S.Shanthi
5.A.Rathinammal

.. Appellants

Vs.

1.S.Lakshmanan
2.The Oriental Insurance Company Ltd.,
158-P, New Road,
Kovilpatti.

.. Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.07.2013 made in M.C.O.P.No.278 of 2012, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Tuticorin.

For Appellant : Mr.S.Siva Thilakar
For Respondents : Mr.C.Jawahar Ravindran (for R2)

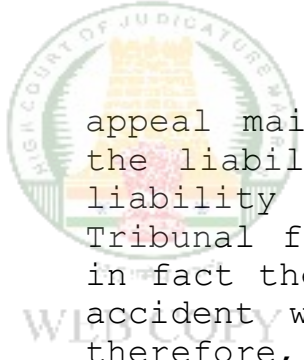
JUDGMENT

The appellant has filed the present C.M.A(MD)No.1213 of 2014, challenging the award passed in MCOP.No.278 of 2012, dated 26.07.2013, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Tuticorin.

2.It is a case of a fatal accident caused in the accident took place on 13.06.2012 around 12.15 hours on Kovilpatti to Sattur Main Road. The heirs of the deceased filed an application seeking compensation before the Tribunal. Considering the facts and circumstances of the case, the Tribunal awarded Rs.9,48,500/- as total compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

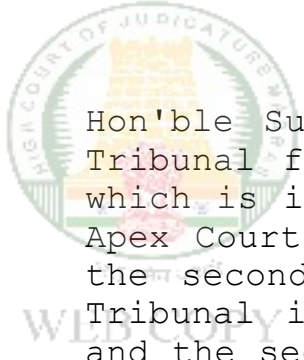
3.The learned counsel for the appellants/claimants filed this



appeal mainly on the ground that the Tribunal erroneously fixed the liability on the owner of the vehicle instead of fixing the liability on the second respondent/Insurance Company. The Tribunal found that it is a case of no valid driving licence and in fact the driver, who was driving the vehicle, which met with an accident was not in possession of a valid driving licence and therefore, the Tribunal has exonerated the liability of the Insurance Company and fixed the entire liability on the owner of the vehicle. The proposition laid down by the Tribunal is directly in violation of the settled principles laid down by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in (2004) 13 SCC 224 is applied which is extracted below:

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

4. The Tribunal, while making note of the fact that the driver, who was driving the vehicle, which met with an accident was not in possession of the valid driving licence ought to have fixed the liability on the Insurance Company and should have been ordered pay and recovery in accordance with the guidelines issued by the



Hon'ble Supreme Court in the case cited supra. Contrarily, the Tribunal fixed the entire liability on the owner of the vehicle, which is in violation of the above said principles of the Hon'ble Apex Court of India cannot be disputed by the learned counsel for the second respondent and accordingly, the award passed by the Tribunal in MCOP.No.278 of 2012, dated 26.07.2013, is set aside and the second respondent/Insurance Company is directed to pay the entire award amount with accrued interest to the appellant/claimant and recover the same from the owner of the vehicle as per the procedures laid down by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in (2004) 13 SCC 224. Accordingly, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is set aside.

5.The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interest within a period of six weeks from the date of receipt of a copy of this order and thereafter, the appellant/claimant is permitted to withdraw the entire award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal District Judge, Tuticorin.

+ 1 CC TO Mr.S.SIVA THILAKAR, ADVOCATE IN SR No. 73789

VSA
TE/SS2-KSM : 19/01/2017 : 3P/3C

C.M.A(MD)No.1213 of 2014
29.11.2016