BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2016
CORAM :

**THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO**
**and**
**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

C.M.A.(MD).No.351 of 2016 & C.M.P(MD)No.4916 of 2016

M/s.National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Nagercoil Post,
Agastheeswaram Taluk,
Nagercoil,
Kanyakumari District.. ... Appellant/Respondent No.3

-Vs.

1.Rajeswari
2.Divya Jose
3.Divakar Jose
Velayudha Perumal (Died) ... Respondents/Petitioners 1-4
4.Saravanan ... Respondent/Respondent-1
5.Srikumar ... Respondent/Respondent-2
6.Premkumar ... Respondent/Respondent-4

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 28.09.2012 passed in M.C.O.P.No.21 of 2005 on the file of Subordinate Judge / MACT, Padmanabhapuram.

For Appellant : Ms.P.Malini

For Respondent 1 : Mr.M.Dennis Joe

**JUDGMENT**

**S.S.SUNDAR, J.**

This Civil Miscellaneous Appeal has been filed by the Insurance Company as against the award dated 28.09.2012 in M.C.O.P.No.21 of 2005, on the file of the Motor Accident Claims Tribunal, Padmanabhapuram.

2.In this appeal, respondents 1 to 4 are the claimants before the Tribunal. The brief facts, that are necessary for the disposal of this Civil Miscellaneous Appeal, are as follows:

2.1.On the fateful day, i.e., on 24.03.2001, the first respondent's husband, was travelling on his motorcycle bearing Registration No.TN-74-Z-9663 from Karungal to Colachal. While he was driving his motorcycle, on the left side of the road, at about 08.00 a.m., a Mahindra Maxi Cab, driven by the sixth respondent driver, belonging to the fifth respondent, dashed against his motorcycle. As a result of the said accident, the rider of the motorcycle was thrown off causing fatal injuries. Even though he was taken to a hospital, he died there. The first petitioner before the Tribunal is his wife, 2nd and 3rd petitioners are the daughter and son of the deceased. The fourth petitioner is the father of the deceased. The claimants claimed a sum of Rs.10,00,000/- as compensation under various heads.



2.2.The third respondent before the Tribunal is the insurer of the vehicle belonging to the fifth respondent. The main contention of the Insurance Company is that the driver of the vehicle had no badge at the time of the accident and the Insurance Company is liable, only if the driver of the vehicle is competent to drive the maxi cab which is a transport vehicle. Since there is a violation of policy condition, the third respondent disputed the liability, relying upon several judgments of this Court as well as the Hon'ble Apex Court. The Tribunal awarded a compensation of Rs.9,89,744/- to the claimants, with interest at the rate of 7.5% per annum, from the date of petition. The Tribunal also has observed that the Insurance Company has to pay, but can recover the same from the owner of the vehicle.

3.In this appeal, the Insurance Company challenged the liability and the direction of the Tribunal to pay and recover. Though the learned counsel appearing for the appellant referred to various provisions of Motor Vehicles Act and Rules, we find that the matter is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in the case of ***S.Iyyapan vs. United India Insurance Co. Ltd., and another*** reported in ***2013 (2) TN MAC 262 (SC).*** Paragraph 18 of the said judgment is relevant and is extracted as under:

> "18.Reading the provisions of Section 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the Insurer's right is safeguarded but in any event the Insurer has to pay Compensation when a valid Certificate of Insurance is issued notwithstanding the fact that the Insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the Insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the Insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a Light Motor Vehicle but before driving Light Motor Vehicle used as Commercial vehicle, no endorsement to drive Commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of Compensation so awarded from the Insurer. It is for the Insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the Insurance Policy."

4.In view of the binding precedent of the Hon'ble Supreme Court, this appeal deserves dismissal and hence, the same is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-I)



/TRUE COPY/

Sub Assistant Registrar

To
The Subordinate Judge / MACT,
Padmanabhapuram.

+1cc to M/S.P.Malini, Advocate in SR.No.33111
+1cc to M/S.M.Dennis Joe, Advocate in SR.No.33171

Judgment in
C.M.A.(MD).No.351 of 2016
27.06.2016

SRM
PA/NGM-MP/SAR II/11.07.2016/3P/4C