



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)Nos.568 and 569 of 2014

and

M.P.Nos.1 and 1 of 2014

C.M.A(MD)No.568 of 2014

National Insurance Company Ltd.,
Madurai
Represented through its
Divisional Manager,
No.3, North Veli Street,
Madurai -1.

.. Appellant/2nd Respondent

-Vs-

1.Meenakshi ...1st Respondent/Petitioner

2.Jayalakshmi ...2nd Respondent/1st Respondent

3.Rajarajan ...3rd Respondent/3rd Respondent

4.M/s.Bajaj Allianz General Insurance Ltd.,
Through its Branch Manager,
K.M.A. Complex,
12-G, Ramnagar,
Bypass Road,
Madurai 625 010.

.. 4th Respondent/4th Respondent

(The third respondent remained
exparte and the fourth respondent
is not a necessary party)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and decree dated
16.09.2011 made in M.C.O.P.No.507 of 2006 on the file of the Motor
Accident Claims Tribunal (III Additional Subordinate Judge)
Madurai.

**C.M.A(MD) No.569 of 2014**

National Insurance Company Ltd.,
Madurai

Represented through its
Divisional Manager,
No.3, North Veli Street,
Madurai -1.

.. Appellant/2nd Respondent

-Vs-

1.Minor Karthika ...1st Respondent/Petitioner

2.Jayalakshmi ...2nd Respondent/1st Respondent

3.Rajarajan ...3rd Respondent/3rd Respondent

4.M/s.Bajaj Allianz General Insurance Ltd.,
Through its Branch Manager,
K.M.A. Complex,
12-G, Ramnagar,
Bypass Road,
Madurai 625 010.

(The third respondent remained
exparte and the fourth respondent
is not a necessary party) ..4th Respondent/4th Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and decree dated
16.09.2011 made in M.C.O.P.No.508 of 2006 on the file of the Motor
Accident Claims Tribunal (III Additional Subordinate Judge)
Madurai.

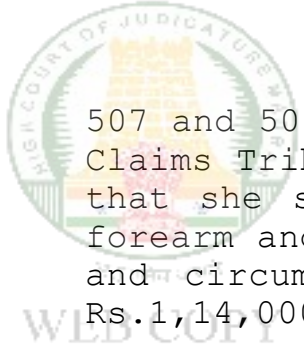
For Appellant : Mr.J.S.Murali
(For both appeals)

For R1 : Mr.M.P.Senthil
(For both appeals)

COMMON JUDGMENT

The appellant Insurance Company has preferred the present
civil miscellaneous appeals challenging the common award passed in
M.C.O.P.Nos.507 and 508 of 2006, dated 16.09.2011 on the file of
the Motor Accident Claims Tribunal (III Additional Subordinate
Judge) Madurai.

<https://hcservices.courtsgov.in/hcservices> The case of injury caused due to the accident took
place on 13.10.2005 at 2.15 p.m. At Madurai-Thathaneri Main
Road. The injured/victims filed two petitions in M.C.O.P.Nos.



507 and 508 of 2006 seeking compensation before the Motor Accident Claims Tribunal (III Additional Subordinate Judge) Madurai stating that she sustained compound fracture on right radius and right forearm and abrasion injuries on both legs. Considering the facts and circumstances of the case, the Tribunal awarded a sum of Rs.1,14,000/- as total compensation.

3.The learned counsel for the appellant contended that the Tribunal erroneously ordered for pay and recovery in respect of the facts that the Insurance Company proved that the driver, who was driving the vehicle, which met out with an accident did not possess valid driving licence. Therefore, the Tribunal ought to have exonerated the Insurance Company from the liability and the pay and recovery method ordered by the Tribunal is unsustainable.

4.Further, the learned counsel for the appellant contended that the quantum fixed for partial loss of earning of Rs.21,000/- by the Tribunal in M.C.O.P.No.507 of 2006 is erroneous and the same has to be set aside. Both contentions raised by the learned counsel for the appellant deserve no merit in view of the fact that the settled principles laid down by the Supreme Court of India in respect of pay and recover in the decision in **Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)**, which is extracted hereunder:

"..... 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 vehicle shall be disposed of in the aforesaid terms, with no order as to costs."



5. In respect of other plea, this Court is not inclined to modify the award passed by the Tribunal in view of the fact that the Tribunal fixed a meagre amount of Rs.3,000/- as monthly income of the claimant and fixed the compensation of Rs.21,000/- under the head partial loss of income and the same is just and proper. Hence, both the appeals deserve no consideration and the common award passed in M.C.O.P.Nos.507 and 508 is confirmed.

6. In the result, the civil miscellaneous appeals are disposed of. The learned counsel for the appellant represented that the Insurance Company already deposited the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal. The claimant in M.C.O.P.No.507 of 2006 is permitted to withdraw the entire award amount with proportionate accrued interest and costs through RTGS by filing necessary application before the Tribunal concerned. The Tribunal is directed to deposit the share of the minor claimant, represented by her mother and next friend Selvi to the credit of M.C.O.P.No.508 of 2006 in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attains majority. The guardian of the minor claimant, is permitted to withdraw the accrued interest of the minor once in three months directly from the bank, only for the welfare of minors. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal
(III Additional Subordinate Judge),
Madurai.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to MR.M.P.Senthil, Advocate SR.No.69620
+2cc to Mr.J.S.Murali, Advocate Sr.No.69860, 69861

cla
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