



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)Nos.770 to 772 of 2015

and

CMP(MD)No.4240 of 2016

**CMA(MD) .NO.770 OF 2015**

The Divisional Manager,  
National Insurance Company Limited,  
North Veli Street,  
Madurai.

.. Appellant/2<sup>nd</sup> Respondent

-Vs-

1.S.R.Johnsirani  
2.Thangaraj

.. Respondents/Petitioner

**Prayer:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.07.2014 and made in M.C.O.P.No.1381 of 2011, on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Madurai.

**CMA(MD) .NO.771 OF 2015**

The Divisional Manager,  
National Insurance Company Limited,  
North Veli Street,  
Madurai.

.. Appellant/2<sup>nd</sup> Respondent

-Vs-

1.Minor N.Deeptha  
(Represented by Father & Natural Guardian)  
2.Thangaraj

.. Respondents

**Prayer:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.07.2014 and made in M.C.O.P.No.1382 of 2011, on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Madurai.

**CMA(MD) .NO.772 OF 2015**

The Divisional Manager,  
National Insurance Company Limited,  
North Veli Street,  
Madurai.

.. Appellant

-Vs-



1.P.K.Narayanamoorthy  
2.Thangaraj

.. Respondents

**Prayer:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.07.2014 and made in M.C.O.P.No.1383 of 2011, on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Madurai.

For Appellant : Mr.R.Srinivasan  
(in all the CMAs)  
For Respondents : Mr.K.Samidurai (for R1)  
(in all the CMAs)

### **COMMON JUDGMENT**

The appellant/Insurance Company Limited filed these C.M.A(MD) Nos.770 to 772 of 2015, challenging the award passed in M.C.O.P.Nos.1381, 1382 and 1383 of 2011 respectively, dated 30.07.2014, on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Madurai.

2.The three civil miscellaneous appeals were filed challenging the common order passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai and the three appeals arose out of the same accident took place on 06.11.2010 at about 22.30 hours in Alagarkoil Main Road, Kammakulam Junction in front of Thyagigal Sthubi.

3.It is a case of injury and the claimants filed the applications for compensation before the Tribunal/Chief Judicial Magistrate, Madurai and the Tribunal considering the facts and circumstances of the case, passed an award of Rs.2,38,660/-, Rs.89,610/- and Rs.1,03,900/- respectively. Against the award amount, the present appeals filed by the appellant/National Insurance Company Limited solely on the ground that the driver, who was not having driving licence to drive the vehicle. The Tribunal though found that the driver, who was driving the vehicle, which met with an accident was not in a possession of the valid driving licence has failed to take note of the aspect. In such a case, the Tribunal ought to have adopted the principles laid down by the Hon'ble Supreme Court in the case of Nanjappan and others. On perusal of the evidence, it is seen that the possession of the valid driving licence by the driver has not been established. Therefore, this Court is inclined to adopt the principles of pay and recovery as 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:



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.Hence, the pay and recovery is ordered and accordingly, the award passed by the Motor Accident Claims Tribunal in M.C.O.P.Nos. 1381, 1382 and 1383 of 2011 respectively, dated 30.07.2014, are confirmed and these civil miscellaneous appeals are disposed of.

5.Accordingly, the appellant/Insurance Company in all the three appeals are directed to deposit the entire award amount with accrued interest within a period of four weeks from the date of receipt of a copy of this order and thereafter, the respondents/claimants in all the three appeals are permitted to withdraw the entire award amount with accrued interest, by making necessary applications before the Tribunal. In so far as the minor share is concerned, the Tribunal is directed to invest the said amount in any one of the Nationalised Bank, till she attains majority. On such investment, the guardian of the minor N.Deeptha, is permitted to withdraw the accrued interest from out of the share amount of the minor for the welfare of the minor, once in three months directly from the Bank. No costs. Connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

/True Copy/



To

The Chief Judicial Magistrate,  
Motor Accident Claims Tribunal  
Madurai.

**Copy to :** The Section Officer, V.R Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.SRINIVASAN Advocate in SR. No.67488

VSA

JS/MR/SAR.1/13.07.2017/4P-4C

**C.M.A(MD)Nos.770 to 772 of 2015**  
**and**  
**CMP(MD)No.4240 of 2016**  
**10.11.2016**