



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) Nos.1236 and 1237 of 2013  
and  
MP(MD)Nos.1 and 1 of 2013

C.M.A(MD) Nos.1236/13

The Oriental Insurance Company Limited,  
Rep. By its Branch Manager,  
2<sup>nd</sup> Floor, Sathiyamoorthy Road,  
Pudukottai-622 001.

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

Vs

1.Periyasamy : 1<sup>st</sup> Respondent/Petitioner  
2.K.Ramesh : 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent  
[2<sup>nd</sup> respondent remained  
exparte before the lower court]

**Prayer in CMA(MD)No.1236 of 2013:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.68 of 2011, dated 20.02.2013 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Karur.

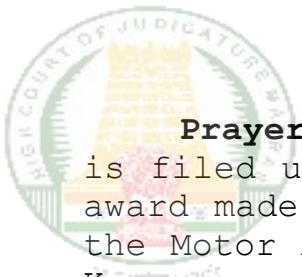
C.M.A(MD) Nos.1237/13

The Oriental Insurance Company Limited,  
Rep. By its Branch Manager,  
2<sup>nd</sup> Floor, Sathiyamoorthy Road,  
Pudukottai-622 001.

: Appellant/2<sup>nd</sup> respondent

Vs.

1.Vignesh : 1<sup>st</sup> Respondent/Petitioner  
2.K.Ramesh : 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent  
[2<sup>nd</sup> respondent remained  
exparte before the lower court]



**Prayer in CMA(MD)No.1237 of 2013:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.69 of 2011, dated 20.02.2013 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Karur.

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For Appellant : Mr.K.Bhaskaran

For 1<sup>st</sup> Respondent: Mr.M.Karthikeya Venkatachalapathy

For 2<sup>nd</sup> Respondent: No appearance

### JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Karur, made in MCOP Nos.68 and 69 of 2011, dated 20.02.2013, these appeals are preferred by the appellant Insurance company.

2.According to the claimants, on 01.07.2009 on Pattukottai-Aranthangi main road near Keeramangalam Vandikottagai, Vignesh was driving the motor cycle bearing registration No.TN-55-Q-9634, while Periyasamy was travelling as a pillion rider. At the time, a Hero Honda Splender Motor cycle bearing registration No.TN-49-AZ-3326 came in a rash and negligent manner, dashed the motor cycle. In the impact, they sustained multiple injuries all over the body and fell on the road. A claim was made for Rs.5,00,000/- by the each claimant.

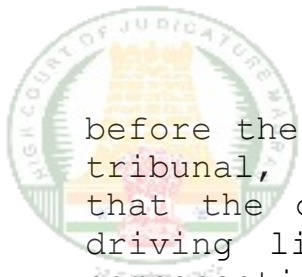
3.The claim petition was resisted by the appellant Insurance Company disputing the manner of the accident and their liability to pay the compensation.

4.Before the tribunal, both the claimants examined themselves as PW1 and PW2 and two other witness were examined as PW3 and PW4 and marked Exs.P1 to P19. On the side of the Insurance Company, two witnesses were examined as RW1 and RW2 and documents Exs.R1 to R5 were marked.

5.Heard both sides and perused the materials available on record.

6.The claimants have deposed the manner of the accident and marked Ex.P1 First Information Report. The tribunal, accepting the oral and documentary evidence came to the conclusion that the driver of the Hero Honda Motor cycle was responsible for the accident.

7.It is the specific case of the appellant that the rider of the Hero Honda Motor Cycle was not having valid driving licence on the date of the accident. RW1 and RW2 have deposed to that effect



before the tribunal and they have also produced Exs.R1 to R5. The tribunal, after analysing the oral and documentary evidence held that the driver of the offending vehicle, did not have a valid driving licence and ordered pay and recovery, while awarding compensation of Rs.72,280/- and Rs.1,21,920/- along with interest @ 7.5% p.a.

8.Mr.K.Bhaskaran, learned counsel appearing for the appellant Insurance company would submit that the appeals have been filed only challenging their liability to pay the compensation and the quantum is not in dispute. He would further submit that the tribunal having come to the conclusion that there is a violation of the policy condition, erred in directing to pay and later recover.

9.It is seen from the records that both the claimants are admittedly third parties and the offending vehicle had insurance coverage at the time of the accident. Therefore, in my view, the tribunal has rightly issued the direction. There is no merit in this appeal.

10.In fine, the appeals are dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimants are permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case [(2004)13 SCC 224]** cited supra. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

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To

1 The Chief Judicial Magistrate - Cum-  
Motor Accidents Claims Tribunal,  
Karur



2 The Section Officer,  
V.R. Section  
Madurai Bench of Madras High Court,  
Madurai,

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+2cc to Mr.Bhaskaran, Advocate Sr.No. 33117,33118

JAM/19.12.16/KM/4p-5c

**COMMON Judgment made in**

**CMA(MD)Nos.1236 and 1237 of 2013  
24.06.2016**