



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

C.M.A.(MD).No.1555 of 2013 &  
M.P.(MD).No.3 of 2013

Oriental Insurance Company,  
through its Branch Manager,  
Saradha Complex,  
Simmakkal,  
Madurai.

.. Appellant/Respondent No.2

**Vs.**

1.Pandikrishnan  
2.A.Vellaichamy

.. Respondent No.1/Petitioner  
.. Respondent No.2/Respondent No.1

**Prayer:-** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the Motor Accident Claims Tribunal cum (Additional District Court/Fast Track Court, No.II), Madurai made in MCOP No.17/2006, dated 07.02.2012 and allow the appeal with costs and render justice.

For Appellant : Mr.C.Jawahar Ravindran  
For Respondent : No appearance

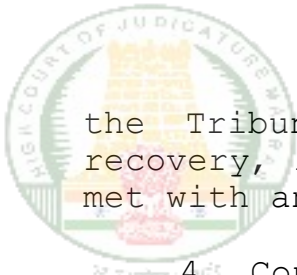
### **JUDGMENT**

The accident took place on 07.12.2001 at about 17.15 hrs at Madurai Town-Arasaradi Road. It is a case of injury and the first respondent claimant sustained grievous injuries. The claim petition was filed before the Motor Accident Claims Tribunal cum Additional District Court/FTC No.II, Madurai, in MCOP No.17 of 2006 and the Tribunal after considering the facts and circumstances of the case, awarded Rs.1,16,000/- towards total compensation.

2. The Oriental Insurance Company, preferred the present appeal challenging the award on the ground that the driver who was driving the vehicle, which met with an accident, was in possession of license for driving light motor vehicle and did not possess a license for driving two wheeler. Hence, it is to be construed as if he was not having a valid driving license to drive two wheeler. These aspects were not considered by the Tribunal and hence the present appeal.

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

3. The learned counsel for the insurance company contended that



the Tribunal ought to have adopted the principle of pay and recovery, in view of the fact that the driver of the vehicle, which met with an accident, did not possess a valid driving license.

4. Considering the facts and circumstances of the case, this Court is inclined to follow the principles laid down by the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)***, the Hon'ble Supreme Court in paragraph 7 it has been held as follows:-

"(7) ....For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

5. In view of the above, the award of the Tribunal passed in M.C.O.P.NO.17 of 2006 dated 07.02.2012 is confirmed.

6. The learned counsel for the appellant represents that the entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary permission petition.

7. The Insurance Company is permitted to recover the award amount from the owner of the vehicle as per the mode incorporated in **Shri Nanjappan's case** referred to above.

8. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar



**To**

The Motor Accident Claims Tribunal cum  
Additional District Judge,  
Fast Track Court No.II,  
Madurai.

+ 1 CC TO Mr.C.JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 68764/16

JIKR

TE/CK : 21/12/2016 : 3P/3C

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