



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

C.M.A.(MD)No.140 of 2011

and M.P(MD)No.3 of 2011 and C.M.P.(MD)No.9966 of 2016

The Oriental Insurance Co.Ltd.,
Through its Branch manager,
I Floor, D.D.J.Centre,
Vadasery, Nagercoil.

..Appellant/3rd Respondent

Vs.

..1st Respondent/Petitioner

1.R.Vijayalakshmi
2.Sivakumar @ Kumar
3.V.Saravanan
4.M.Yogavalli
5.T.Ganagaraj

..Respondents 2 to 5/Respondents 1,2,4 & 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988 against the award dated 21.01.2010 in M.C.O.P.No.1263 of 2005 passed by the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Appellant	: Mr.A.K.Baskarapandian
For Respondents	: Mr.M.M.Manivel Pandian for R1
	No appearance for R3

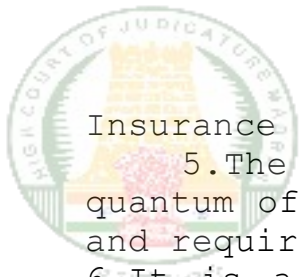
JUDGMENT

The Civil Miscellaneous Appeal is filed against the award dated 21.01.2010 in M.C.O.P.No.1263 of 2005 passed by the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

2.It is a case of a fatal accident occurred on 10.08.2002 at about 18.45 hours in Main Road, Idaichivilai, Sattankulam Taluk, Tutuciroin District.

3.The injured victim filed an application before the Motor Accident Claims Tribunal, Principal District Court, Tuticorin District in M.C.O.P.No.1263 of 2005 and the Tribunal considering the facts and circumstances of the case, awarded a sum of Rs.2,85,500/- as total compensation.

4.Challenging the award, the appellant / Oriental Insurance company has preferred the present appeal on the ground that the driver, who was driving the vehicle, met with an accident, was not in possession of a valid driving licence and he was holding only the learners licence. Possession of the learners licence cannot be construed as a valid driving licence and therefore, the Tribunal had erroneously fixed the liability on the appellant /



Insurance Company instead of ordering for pay and recovery.

5.The learned counsel for the appellant contended that the quantum of compensation awarded by the Tribunal was also excessive and requires reconsideration.

6.It is a case of a fatal accident and the claimants filed the application seeking compensation and further the Tribunal awarded Rs.2,85,500/-, which cannot be construed as excessive and therefore, this Court is not inclined to interfere with the quantum of award fixed by the Tribunal.

7.In respect of the finding that it is a case of no valid driving licence, this court is inclined to pass an order of pay and recovery in accordance with the principles laid down by the Hon'ble Supreme Court in the case reported in (2004)13 SCC 224 in the case of Oriental Insurance Co. Ltd., vs. Nanjappan and others, has held as follows:-

"..... 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."

8.Accordingly, pay and recovery is ordered. In all other respects, the award passed by the Tribunal in M.C.O.P.No.1263 of 2005 is confirmed and the Civil Miscellaneous Appeal is disposed of.

9.The learned counsel for the appellant submitted that the entire award amount has already been deposited and the respondents / claimants are permitted to withdraw the entire award amount with accrued interest through RTGS by filing necessary application before the Tribunal concerned. No costs. Consequently, connected M.P.and C.M.P.are closed.

Sd/-

Assistant Registrar(CO)



To

The Principal District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

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

+1cc to M/s.A.K.Baskarapandian, Advocate in SR. 71286

+1cc to M/s.M.M.Manivel Pandian, Advocate in SR.72263

C.M.A. (MD) No.140 of 2011
22.11.2016

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