



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.1168 of 2016

and

C.M.P(MD)No.10385 of 2016

and

Cros.Obj.(MD).No.2 of 2017

C.M.A(MD)No.1168 of 2016

M/s.National Insurance Company Limited,
Tiruchi Branch II 33,
Promenade Road,
Tiruchi-1.

... Appellant/4th Respondent

Vs.

1.Minor V.Sivayashini,
D/o.S.Vinayagamoorthy,
(Represented by her father and guardian
S.Vinayagamoorthy, 40, Gandhi Street,
Subramaniapuram,
Tiruchi-20.

... Respondent/Petitioner

2.B.Loganathan,

... Respondent/1st Respondent

3. New India Assurance
Company Limited,
66, W.B.Road, Tiruchi.

...Respondent/ 2nd Respondent

4.S.Boopathy

... Respondent/ 3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Order and Decree dated 27.10.2005 passed in M.A.C.O.P.No.647 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Court (PCR), Tiruchirappalli.

For Appellant	: Mrs.P.Malini
For R-1	: Mr.V.R.Shanmuganathan
For R-3	: Mr.Y.Prakash
For R-4	: No Appearance

**CROS OBJ(MD) .No.2 of 2017**

Minor.V.Sivayashini,
D/o.S.Vinayagamoorthy,
(Represented by her father and guardian
S.Vinayagamoorthy, 40, Gandhi Street,
Subramaniapuram, Tiruchi-20.) ... Appellant/1st Respondent
Claimant

Vs.

1.M/S.National Insurance Company Limited,
Tiruchi Branch II,
33, Promenade Road,
Tiruchi-1. ... 1st Respondent/Appellant

2. B.Loganathan,
S/o.T.Balasubramanian,
M/s.Jayalakshmi Cottage Industries,
No.46 A, Old Hospital Road, Mailam,
Tiruchi-8.

3. New India Assurance Company Limited,
66, W.B.Road, Tiruchi.

4.S.Boopathy ... Respondents 2 to 4/ Respondents 2 to 4

PRAYER:- Cross Objection filed under Order 41 Rule 22 of CPC to call for the records relating to the judgment and decree dated 27.10.2005 passed in M.C.O.P.No.647 of 2002 on the file of the learned Motor Accidents Claims Tribunal (I Additional District Judge (PCR), Tiruchirappalli and set aside the same insofar as the amount of compensation is concerned and enhance the award from Rs.4,11,500/- to Rs.8,00,000/-.

For Appellant	: Mr.V.R.Shanmuganathan
For R-1	: Mrs.P.Malini
For R-3	: Mr.B.Rajesh Saravanan

COMMON JUDGMENT

The insurer has filed this appeal aggrieved by the non application of the pay and recover principle.

2.A Six month old child namely, V.Sivayashini along with her mother were travelling as a passengers in an auto insured with the appellant. The auto was involved in an accident with a van insured with the third respondent herein. In the resultant



accident, the child got injured. The child lost her right leg. The father of the minor child filed M.A.C.O.P.No.647 of 2002, before the Motor Accidents Claims Tribunal, I Additional District Judge (PCR), Tiruchirappalli. The Tribunal apportioned the negligence between the auto driver and the van driver. Therefore, the appellant insurer and the third respondent insurer were made liable to satisfy the award on 50:50 basis.

3.The grievance of the appellant is that the auto driver was not possessing any valid driving license. Therefore, there is breach of policy condition. In such cases the Tribunal must have directed the insurer to pay the claimant and thereafter, permit the insurer to recover the paid amount from the insured. In this case, such relief was not given to the insurer. Only to that extent this appeal has been filed. Since the appellant is not denying its liability to satisfy the award in the first instance and the quantum of compensation is also not under question, the question of entertaining a cross appeal at the instance of the claimant would not arise.

4.The learned counsel appearing for the appellant relied on the decision of the Division Bench of this Court reported in **1993 ACJ 486 (United Insurance Company Limited v. Rajammal)**. The said decision is squarely applicable to the facts and circumstances of this case. This Court, therefore, dismisses Cross objection No.2 of 2017 filed by the claimants. The impugned award dated 27.10.2005 passed in M.A.C.O.P.No.647 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Court (PCR), Tiruchirappalli is modified by directing the appellant insurer to deposit a sum of Rs.4,11,500/- with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any and proceed against the insured/fourth respondent herein to recover the amount to be paid to the claimant by filing Execution Petition in the very same proceedings. The claimant is a minor girl. The entire compensation amount shall be deposited in any one of the nationalised bank and the guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank, till she attains majority.

5.C.M.A.(MD).No.1168 of 2016 stands allowed. Cros.Obj.(MD) No.2 of 2017 is dismissed. No costs. Consequently, the connected C.M.P(MD)No.10385 of 2016 is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

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

Sub Assistant Registrar



To

The I Additional District Judge (PCR).
Motor Accidents Claims Tribunal,
Tiruchirappalli.

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Copy to:

The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+ 1 cc TO Mrs.P.Malini , Advocate in SR No. 94174
+ 1 cc TO Mr.VR.Shanmuganathan , Advocate in SR No. 94380

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AE/SKN RSK/SAR2/27.07.2018/4P/6C

C.M.A (MD) No.1168 of 2016
and
C.M.P (MD) No.10385 of 2016
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