

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 28.07.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A. (MD) .No.1982 of 2013**

The Manager,
The New India Assurance Company Limited,
Branch Office, Jerome Building,
Fort Station Road,
Tiruchy.

.. Appellant /2nd Respondent

Vs.

1.Ponnusamy

2.Periyamma

..1st & 2nd Respondents/ Petitioners

3.C.Manivannan

..3rd Respondent /1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order made in M.C.O.P.No.1344 of 2003, dated 27.09.2012 on the file of the Motor accidents Claims Tribunal/II Additional District Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

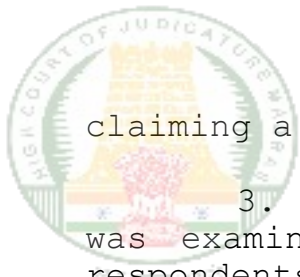
For R1 & R2 :No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated 27.09.2012 passed in M.C.O.P.No.1344 of 2003 by the Motor accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli.

2.The case of the claimants in the petition is briefly as follows:

On 06.09.2002 at about 11.30 p.m., the second petitioner and her daughter deceased Susila were sitting in front of Mariamman Temple for taking rest, at that time, a mini bus bearing registration No.TN 45 N 0436 of the first respondent insured with the second respondent, which was coming from the South to North direction and was driven by its driver in a rash and negligent manner, unmindful of traffic rules, ran over the deceased Susila and other persons who were sitting there. Due to the impact of the accident, the said Susila died on the spot. Hence, the parents of the deceased Susila, filed a claim petition before the Tribunal



claiming a sum of Rs.7,00,000/- as compensation.

3. Before the Tribunal on the side of the petitioner, P.W.1 was examined and Exs.P1 to P3 were marked. On the side of the respondents, R.Ws.1 and 2 were examined and Exs.B1 to B6 were marked.

4. On consideration of the evidence available on record, the Tribunal, has awarded a sum of Rs.4,49,000/- with interest at the rate of 7.5% p.a. Challenging the said award, the New India Assurance Company is before this Court.

5. The learned counsel for the appellant/ New India Assurance Company would submit that in the similar matter in M.C.O.P.No.242 of 2013, which was filed by one of the injured person in the same accident, the Tribunal has ordered pay and recovery. But in this case, the Tribunal has not awarded pay and recovery and the learned counsel would submit that pay and recovery may be ordered by following the judgment in **ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS** reported in **2004(2) CTC 464**, wherein the mode of recovery has been clearly dealt in paragraph 8 of the judgment, which reads as follows:-

"Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in *Baljit Kaur's case* (supra) that the insurer 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 orders as to costs.



6. Following the above Judgment and the Judgment in the connected case, the appellant / New India Assurance Company is directed to pay the compensation and recover the same by following the guidelines in the above Judgment, from the owner of the vehicle.

7. With regard to quantum, the Tribunal has arrived at a correct conclusion. Hence, I find no reason to interfere with the finding arrived at by the Tribunal and it is confirmed.

8. The appellant / Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are permitted to withdraw their share with proportionate interest and costs, as apportioned by the Tribunal, without filing any formal petition before the Court below.

9. In the result, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge,
Motor accidents Claims Tribunal,
II Additional District Court, Tiruchirappalli.

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

+1cc to Mr.J.S.MURALI Advocate in SR. No.68620

+1cc to Mr.S.MANIKANDAN Advocate in SR. No.68678

RJ2

JS/GT/SAR.2/29.08.2017/3P-5C

C.M.A. (MD) .No.1982 of 2013

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