

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

DATED : 22.08.2017
CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.916 of 2013
and
M.P. (MD)No.1 of 2013

M/s. National Insurance Co.Ltd.,
Through its Branch Manager,
North Car Street,
Nagercoil.

... Appellant/Respondent No.2

Vs.

1.Saratha
2.Lakshmi
3.Suseela
4.Rajini
5.Kumari
6.Chithra
7.Indira
8.Rasathi

... 1 to 8 Respondents/Petitioners

9.Anantha Raj

... 9th Respondents/ Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.137/2006, dated 28.07.2010, on the file of the learned Sub Judge, Motor Accident Claims Tribunal, Kuzhithurai.

For Appellant	: Ms.P.Malini
For R-2 to R8	: No Appearance
For R-9	: Mr.M.Saravanakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 28.07.2010 in M.C.O.P.No.137 of 2006 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Kuzhithurai.

2. The appellant / Insurance company is the 2nd respondent in M.C.O.P.No.137 of 2006. The 9th respondent is the owner of the vehicle, insured with the appellant. The respondents 1 to 8 are the claimants in M.C.O.P.No.137 of 2006.



3. The facts of the case are as follows:

The first respondent is the wife and the respondents 2 to 8 are sons and daughters of the deceased Chithambaram Pillai, who died in the accident, which took place on 27.06.2003 at 14.00 hrs. When the deceased was walking along with one Ramesh on Nagercoil - Thiruveananthapuram road near Marthandam C.S.I. Mission Hospital from east to west, the first respondent was driving a bike bearing registration No. TN 74 X 1597 from east to west in a rash and negligent manner and dashed on the back of the deceased Chithamparam Pillai and he fell down and due to the same, the deceased sustained multiple grievous injuries all over body including severe head injuries. He was taken to Thoothukudi Medical College Hospital, where he succumbed to the injuries.

4. The deceased was a salesman and was earning a sum of Rs.1,000/- per month and hence, the respondents 1 to 8 claimed compensation of Rs.75,000/-.

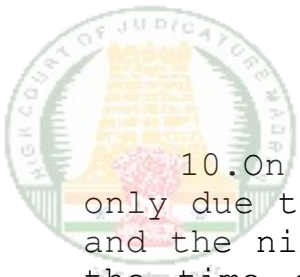
5. The 9th respondent herein, who is the owner of the vehicle remained ex-parte before the Tribunal.

6. The appellant / Insurance Company in the counter statement denied all the contentions of claimants. The appellant / Insurance Company contended that the driver of the 9th respondent did not have valid licence and that the claimants are the dependents of the deceased are to be proved by them. It is stated in the counter affidavit that the compensation claimed is on higher side. It is also contended that the appellant / Insurance Company is not liable to pay compensation and prayed for the dismissal of the claim petition.

7. Before the Tribunal, on the side of the claimant Pws.1 and 2 were examined and 11 documents were marked. The appellant examined one Ganesh, who is the Officer of the Insurance Company as RW.1 and one Maruthu Pandian, who is the official of R.T.O. Office, as RW.2 and marked 5 documents as Exs.B1 to B5.

8. The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only, due to the rash and negligent driving of the rider of the motorcycle and held that the ninth respondent did not have a valid licence and directed the appellant to pay at the first instance and then, recover the said amount from the ninth respondent and awarded a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) as compensation to the claimants.

9. The learned Counsel appearing for the appellant and perused all the materials available on record.



10. On evidence, the Tribunal held that the accident took place only due to the rash and negligent driving of the ninth respondent and the ninth respondent did not have the valid driving licence at the time of the accident. Considering the documents produced by the appellant as well as Ex.B1, the Tribunal held that the ninth respondent did not have the valid driving licence. At the same time, Tribunal after following the Judgment reported in 2010 (1) TN MAC 123 (ICICI LAMBERED GENERAL INSURANCE COMPANY LIMITED v. M.RAKKATHAL AND OTHERS), has held that even though there is no driving licence or valid driving licence, when the driver caused the accident, the Insurance Company is liable to pay the compensation and recover the same from the owner. In view of this fact, Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the ninth respondent. There is no error in the said finding. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimant. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle of "pay and recovery". The compensation awarded in respect of various heads are not excessive. It is only based on the documents produced by the claimants.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the appellant/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the owner of the vehicle/ninth respondent. The appellant Insurance Company shall deposit the award amount to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the vehicle/ninth respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in 2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others). On making such deposit, the claimants are at liberty to withdraw the entire award amount along with accrued interest and costs, without filing a formal application seeking permission. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-II)



To

1. Sub Judge,
The Motor Accident Claims Tribunal,
Kuzhithurai.

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

+1cc to M/S. P.MALINI, Advocate, SR.No.74406.

C.M.A.No.916 of 2013
and
M.P. (MD) No.1 of 2013
22.08.2017

das/rj2
SDS/GT/SAR 1/13.09.2017/4P/4C