

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2352 to 2354 of 2015
and
M.P.Nos.1,1,1 of 2015

The Branch Manager,
National Insurance Co. Ltd,
1st Floor, Karthikeya Complex,
403B-10, Mettur Main Road,
Bhavani.

.. Appellant in all the CMAs /3rd Respondent

Vs.

1.Pappathi .. 1st respondent in C.M.A.No.2352 of 2015/
Petitioner

1.Palanisami .. 1st respondent in C.M.A.No.2353 of 2015/
Petitioner

1.Minor.Shanmugasundaram .. 1st respondent in
(rep. by mother & guardian Pappathi) C.M.A.No.2354 of 2015/

2.Muthusamy

3.Dharmarasan .. 2nd and 3rd respondents in all C.M.As/
1st and 2nd Respondent in all MCOPs

(2nd and 3rd respondents were
set exparte before Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
Judgment and Decree dated 20.06.2013 made in M.C.O.P.Nos.46 to
48 of 2012 on the file of Motor Accidents Claims Tribunal, Sub
Court, Perundurai.

For Appellants : Mr.K.Padmanabhan (in all CMAs)
For R1 : Mr.R.Arundattan for
M/s.C.Munusamy (in all CMAs)
For R2 & R3 : Exparte before Tribunal

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 20.06.2013 made in M.C.O.P.Nos.46 to 48 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Perundurai.

2.The appellant/Insurance Company is the third respondent in all the three M.C.O.P.Nos.46 to 48 of 2012 on the file of Motor Accidents Claims Tribunal, Sub Court, Perundurai. Since all the three appeals are arising out of the common award, the parties are referred to as per their rank in the claim petition. The claimants filed all the three M.C.O.P.Nos.46 to 48 of 2012, claiming a sum of Rs.5,00,000/- respectively, for the injuries sustained by them in the accident that took place on 22.05.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the tractor bearing belonging to the second respondent and directed the third respondent/Insurance Company to pay a sum of Rs.16,700/-, Rs.1,58,000/- and Rs.99,500/- respectively as compensation to the petitioners in M.C.O.P.Nos.46 to 48 of 2012 and recover the same from respondents 1 and 2 by filing separate proceedings.

4.The third respondent/Insurance Company has come out with the present appeals challenging the said award passed by the Tribunal and for setting aside the award passed by the Tribunal.

5.The learned counsel appearing for the appellant/Insurance Company contended that the first respondent/driver of the tractor belonging to the second respondent has not produced the learner's license. A person who is having the learner's license can drive the vehicle only if accompanied by a person having a valid driving license. The Tribunal having held that the driver of the tractor was having only learner's license and erred in ordering pay and recovery. The order of the Tribunal directing the third respondent/Insurance Company to recover the award amount from the respondents 1 and 2 being the driver and owner of the tractor by separate proceedings is unsustainable.

6.Per contra, the learned counsel appearing for the claimants contended that R.W.1/officer of the third respondent-Insurance Company has admitted that the driver of the tractor had learner's license. The Hon'ble Apex Court has held that learner's license is a valid license permitting a person to drive the vehicle. In view of the same, the award of the Tribunal is valid and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the first respondent and perused all the materials available on record.

8. From the materials on record, it is seen that the driver of the tractor had learner's license to drive the vehicle. R.W.1/officer of the third respondent-Insurance Company admitted that, on enquiries from R.T.O. office, they found that driver of the tractor had the learner's license. Subsequently, he was recalled and deposed that learner's license was not produced. When admittedly, the driver of the tractor had learner's license, any proof of the same before the Tribunal will not exonerate the Insurance Company from paying compensation awarded by the Tribunal. The Hon'ble Apex Court in the judgment referred to by the Tribunal reported in A.C.J. 2004 (Volume - I) (National Insurance Co. Ltd. Vs. Swaransingh and others) held that learner's license is a valid license. In view of the same, the award passed by the Tribunal is valid.

9. The next contention of the learned counsel for the appellant/Insurance Company is that the Tribunal erred in directing the third respondent/Insurance Company to pay compensation and recover the same from the respondents 1 and 2, being the driver and owner of the vehicle by initiating separate proceedings after paying the amounts to the claimants. As per the judgment of the Hon'ble Apex Court reported in Oriental Insurance Co. Ltd., vs. Nanjappan and others reported in (2004) 13 Supreme Court Cases 224, it has been held that the Insurance Company can file Execution Petition to enforce the award as if the same is decree of Civil Court. In view of the same, the portion of the award directing the appellant/Insurance Company to initiate separate proceedings to recover the amounts from the driver and owner of the vehicle by initiating separate proceedings alone is set aside. It is open to the Insurance Company to recover the amounts from the respondents 1 and 2 by filing Execution Petition.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,700/-, Rs.1,58,000/- and Rs.99,500/- respectively to the petitioners in M.C.O.P.Nos.46 to 48 of 2012 respectively with interest at the rate of 7.5% per annum from the date of petition till the date of realisation is confirmed. The third respondent/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, petitioners in M.C.O.P.Nos.46 and 47 of 2012 are permitted to withdraw their award amount as per the ratio of apportionment fixed by the

Tribunal, less the amount, if any already withdrawn. The award of the minor petitioner in M.C.O.P.No.48 of 2012 is directed to be deposited in any one of the Nationalised Bank till he attains majority. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

krk

To

1.Learned Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+3cc to Mr.K.Padmanabhan, Advocate, S.R.No.87009, 87007, 87008

+1cc to Mr.C.Munusamy, Advocate, S.R.No. 86425

C.M.A.Nos.2352 to 2354 of 2015
and
M.P.Nos.1,1,1 of 2015

SPD(CO)
GN(31/05/2019)

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