

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1895 of 2009

and

M.P.No.1 of 2009

The National Insurance Company Limited,
Motor III Party Claims Office,
No.751 Anna Salai,
Chennai - 600 002. Appellant/ 2nd Respondent

Vs.

1.Pushpa
2.Madhavan Respondents 1&2/Petitioners
3.V.Matheswaran 3rd
Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 31.08.2007 made in
MACTOP No.224 of 2005 on the file of the Motor Accidents
Claims Tribunal, Additional District Sessions Judge, Fast
Track Court No.IV, Poonamallee.

For Appellant : Mr.S.Vadivel

JUDGMENT

The appellant/Insurance Company has preferred this appeal
as against the award passed by the claims Tribunal in MCOP.No.
224 of 2005.

2. The case in brief is as follows:

On 03.12.2004 at about 4.00 p.m., one M.Selvam was riding
his motor cycle, bearing Registration No. TN-33-L-0275. When
he was plying on Appakudal Anthony Road, a Jeep bearing
Registration No.TAG-6226 belonging to the third respondent and
insured with the appellant insurance company, came in a rash
and negligent manner from the opposite direction and dashed
against the motorcycle. Due to the said impact, the said
Selvam sustained grievous injuries and despite treatment, he
died after two days. Stating that the accident had occurred
due to the rash and negligent driving of the driver of the
jeep, the legal heirs of the deceased Selvam filed a claim
petition claiming a compensation of Rs.10,00,000/-. The

Tribunal, based on the witnesses and documents adduced by the parties, has fastened the liability on the appellant herein and arrived at the quantum of compensation at Rs.3,08,000/- with interest at 7.5%pa from the date of petition. Aggrieved over the same, the appellant Insurance Company has come up with this appeal.

3.The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the driver of the jeep did not possess valid driving licence at the time of accident and thereby, the owner of the vehicle has violated the policy conditions and hence, the appellant insurance company is not liable to pay compensation to the claimants.

4.Heard the learned counsel for the appellant and perused the materials available on record. Despite ordering notice for more than couple of occasions, the respondents have not been served till date. However, the appeal is taken up for final disposal, considering the paucity of time.

5.There is no dispute with regard to the factum and the manner of accident. What was disputed herein is the liability of the appellant insurance company to pay compensation. According to them, the driver of the jeep did not possess valid driving licence at the time of accident and thereby the owner of the vehicle has violated the policy conditions. Admittedly, the driving licence of the driver of the vehicle was not marked before the Tribunal. The Tribunal has also taken note of Exs.R2/Investigation Report, R3/fine paid by the driver for not possessing the licence to drive the vehicle and R4 judgment of the criminal court, in which, the driver of the vehicle was found guilty for not having valid permit to drive the vehicle. In such circumstances, the Tribunal ought to have directed the appellant to pay the compensation at first and then, recover the same from the owner of the vehicle, but it has failed to do so. Hence, this Court is inclined to modify the finding of the Tribunal to that effect. Accordingly, the award of the Tribunal is modified by directing the appellant insurance company to pay the compensation initially and thereafter recover the same from the owner of the vehicle.

6.Since the quantum of compensation awarded by the Tribunal is not disputed by the appellant insurance company, the same is confirmed as such.

7.In the result, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle in accordance with law. On such

deposit being made, the Tribunal is directed to transfer the deposited amount to the respective Bank Accounts of the claimants through RTGS, as per the ratio apportionment made by the claims Tribunal, within a period of one week thereafter.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dua/srk /rk

To

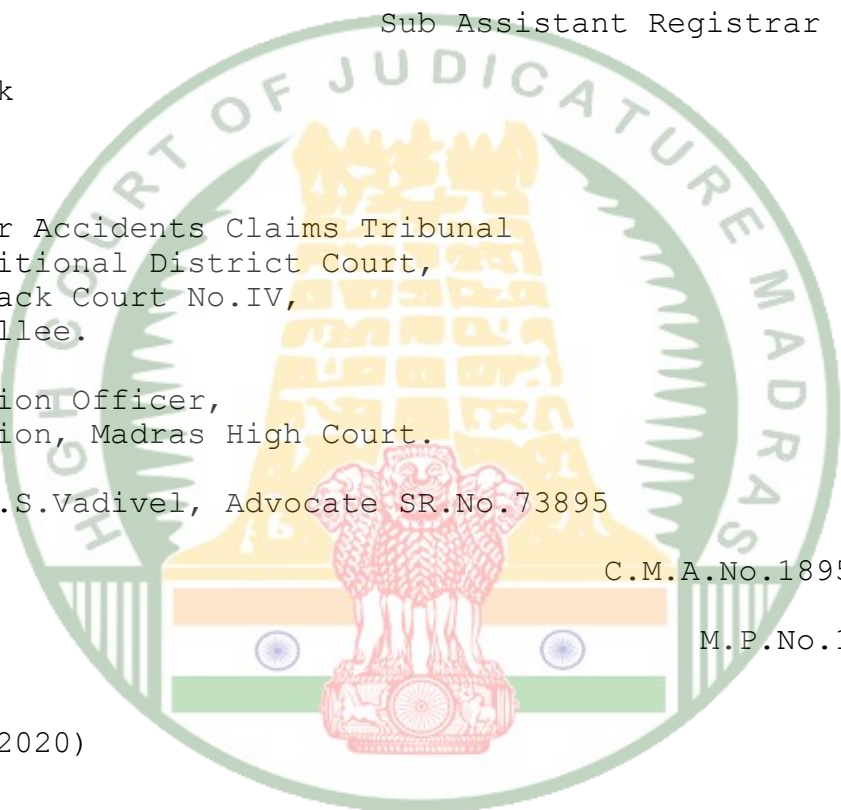
1.The Motor Accidents Claims Tribunal
The Additional District Court,
Fast Track Court No.IV,
Poonamallee.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Vadivel, Advocate SR.No.73895

C.M.A.No.1895 of 2009
and
M.P.No.1 of 2009

MG (CO)
GMY (21/02/2020)



WEB COPY