

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1907 of 2009
and
MP.No.1 of 2009

National Insurance Co. Ltd.,
Third Party Claims Office,
No.752, Anna Salai,
Chennai - 2.Appellant/2nd Respondent

vs.

1.Rajamani
2.Pappammal (Insane Person)
3.Mangai
4.Sarala
5.Ayyappan (minor)
6.Vinayagamorthy (minor)
(2, 5 and 6 are represented by
their mother Rajamani) ...Respondents 1 to 6/Claimants
7.P.Ramanath 7th Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.07.2008 passed in MCOP.No.628 of 2005 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance

JUDGMENT

The National Insurance Company, the second respondent in MCOP.No.628 of 2005 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai has filed the present appeal. The respondents 1 to 6 / claimants filed the claim petition under Sections 163, 163 (A), 166, 140 and 140(2) of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.5,00,000/- for the death of one M.Dharumandhiri, father of the claimants 1, 3 to 6 and husband of the claimant 2 in a road accident on 01.08.2003.

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

On 01.08.2003, the deceased M.Dharumandhiri was standing along Valludhavur Kootu Road, Mudiampakkam and at about 08.00 hours, a speeding lorry bearing Registration No.TN 04 C 8726 belonging to the seventh respondent and insured with the present appellant hit him, as a result of which, the deceased M.Dharumandhiri sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the seventh respondent was the cause of the accident and that since the said lorry was insured with the National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the lorry remained absent before the Tribunal and therefore he was set exparte. The National Insurance Company contested the claim petition on all the grounds available to the insured. The learned II Judge, Court of Small Causes / Motor Accident Claims Tribunal, Chennai while awarding a compensation of Rs.3,39,000/- to the claimants together with interest at the rate of 7.5% per annum, concluded that the National Insurance Company is liable to pay the compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that though sufficient evidence was adduced by the respondents to show that the driver of the lorry was not having a valid driving licence on the date of the accident, the Tribunal fastened liability on the Insurance Company and therefore, the same has got to be set aside.

5. No appearance for the respondents.

6. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision

in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Insurance Company to pay the award amount is liable to be set aside. Therefore, the National Insurance Company is directed to pay the award amount to the respondents 1 to 6 / claimants in the first instance and then recover the same from the owner of the lorry.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimants. A perusal of the award also shows that it is not on the higher side.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The appellant / National Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.3,39,000/- (less the amount already deposited) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.628 of 2005 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the lorry bearing Registration No. TN 04 C 8726 on the same cause of action.

(iv) On such deposit being made, the respondents 1 to 6 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi
To

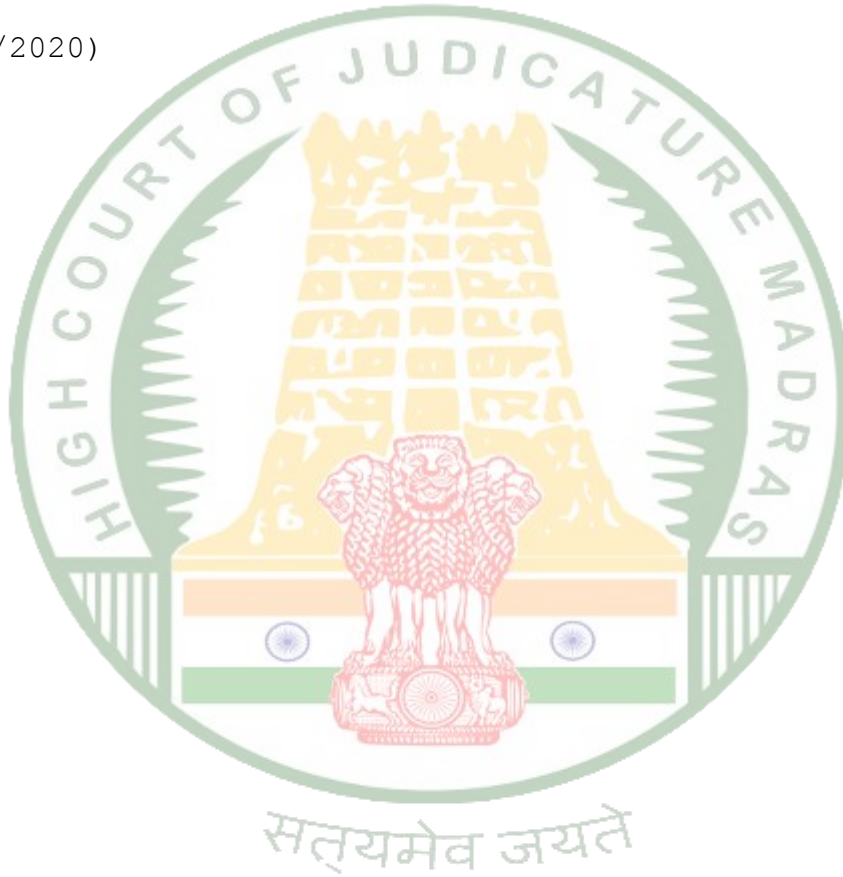
1.The Motor Accidents Claims Tribunal,
The II Judge,
Court of Small Causes, Chennai.

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

+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.92029

CMA.No.1907 of 2009
and
MP.No.1 of 2009

SJ(CO)
CB(22/07/2020)



WEB COPY