

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2705 of 2009

National Insurance Company Limited,
Divisional Office, Balaji Towers, 2nd floor,
No.2, Ramakrishna road, Salem.

... Appellant/II Respondent

vs.

- 1.Sivagami
- 2.Minor Jayasurya
- 3.Minor Jayasurudhi

(Minors 2 and 3 rep. by their mother and
natural friend Sivagami, the first respondent)
: Respondents/Claimants

- 4.Saroja
- 5.Murugan

... Respondents/I Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.03.2009 passed in MCOP.No.792 of 2007, on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem.

For Appellant : Mrs.R.Sreevidhya
For Respondents : No appearance

J U D G M E N T

The appellant / National Insurance Company Limited, the second respondent in MCOP.No.792 of 2007, on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem has filed the present appeal questioning their liability to pay compensation to the claimants since the driver of the vehicle did not possess a valid driving licence on the date of the accident. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.25,00,000/- for the death of one Dharmalingam, husband of the first claimant, father of the claimants 2 and 3 and son of the claimant 4 in a road accident on 06.06.2007.

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

On 06.06.2007, the deceased Dharmalingam was travelling as a pillion rider in a two wheeler TVS 50 moped along with one Periyasamy as rider on Thimmanaickenpatti - Valapaddi main road. At about 19.30 hours, a speeding auto bearing Registration No. TN 30 A 9183 belonging to the fifth respondent and insured with the present appellant, hit the TVS 50 moped, as a result of which, the deceased sustained injuries and subsequently died in the Hospital. According to the claimants, the rash and negligent driving of the driver of the auto belonging to the fifth respondent was the cause of the accident and that since the said auto was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The fifth respondent (the owner of the auto) remained absent before the Tribunal and therefore, he was set exparte. The National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Principal District Judge / Motor Accident Claims Tribunal, Salem after analysing the evidence on record, awarded a compensation of Rs.5,44,500/- together with interest at the rate of 7.5% per annum to the claimants. The Tribunal further directed the Insurance Company to pay the compensation amount in the first instance and then recover the same from the owner of the auto, since the driver of the auto did not possess a valid driving licence on the date of the accident. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mrs.R.Sreevidhya, learned counsel appearing for the appellant. No appearance on behalf of the respondents.

5. 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).

6. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the National Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the auto is perfectly in order.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant / National Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.5,44,500/- (less the amount already deposited) together 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.792 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem 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 auto bearing Registration No. TN 30 A 9183 in the manner known to law.

(iv) On such deposit being made, the respondents 1 to 4 / 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(Arbitration)

// True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Salem.

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

1cc to Ms.R.Sreevidhya, Advocate, SR.No.87842.

CMA.No.2705 of 2009

LN(CO)

CSR: 11.03.2020