

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3168 of 2009

National Insurance Co. Ltd.,
East Port Complex, 3rd Floor,
Palakadu District,
Kerala.

...Appellant/3rd Respondent

.Vs.

1.A.Mani @ Subramanian1st Respondent/Petitioner
2.M.Srimunjiip Rahman
3.S.Hakkim ... Respondents 2 & 3/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 23.03.2009 passed in MACTOP.No.592 of 2006 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.3, Dharapuram).

For Appellants : Mr.S.Vadivel

For Respondents: Mr.Ma.P.Thangavel for R1
No Appearance for R2 & R3

JUDGMENT

The appellant Insurance Company Limited, East Port Complex, 3rd Floor, Palakadu District, Kerala is the 3rd respondent in MCOP.No.592 of 2006 on the file of the Fast Track Court No.3 / Motor Accident Claims Tribunal, Tharapuram and they filed the present appeal questioning the quantum of compensation and also the liability to pay the compensation awarded by the Tribunal.

2. The case of the claimant in MCOP No.592 of 2006 in nutshell is as follows:

The claimant was riding his motor cycle on 28.05.2006 on Anaimalai Ambarampalayam Main Road. When he was nearing Sundarapuri at about 5.30 p.m, a speeding car bearing Registration No.KL-8 J - 2048 hit the motor cycle driven by the claimant, as a result of which, he sustained injuries all over

his body. Immediately, he was rushed to Alvas Hospital at Ambarampalayam, where he took treatment as an inpatient for several days. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration No.KL-8 J - 2048 was the cause of the accident and that since the said car was insured with the National Insurance Company Limited, Palakadu (present appellant), both of them are severally and jointly liable to pay compensation to the claimant. His further contention is that he was working in a private company earning a sum of Rs.5000/- per month and that as a result of the accident, he was permanently disabled. He therefore prayed for compensation of Rs.5,00,000/- for the injuries sustained by him.

3. The owner of the car and the Insurance Company contested the claim petition and the learned Fast Track Judge No.3, Dharapuram, on analysing the evidence on record awarded a sum of Rs.1,15,000/- together with interest at 7.5% per annum to the claimant. He also fixed the entire responsibility on the driver of the car bearing Registration No.KL - 8J - 2048. Aggrieved over the same, the present appeal has been preferred by the appellant.

4. Mr. S.Vadivel, learned counsel appearing for the appellant would contend that when it was specifically contended that the driver of the car was not having any valid driving license on the date of accident, the Tribunal directed the Insurance Company to pay the entire compensation mainly on the basis that the Insurance Company did not examine the Regional Transport Officer. He would further contend that the Tribunal awarded an exorbitant amount of Rs.1,15,000/- even though Dr.Periyasamy (PW2) has assessed the partial permanent disability as 22%.

5. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the 1st respondent contended that the Tribunal after considering the various aspects of the case determined the compensation as Rs.1,15,000/- and the same need not be disturbed at this stage. The FIR (Ex.P1) shows that the driver of the car was charged with the offences punishable under Sections 279 and 337 of Indian Penal Code. He was not charged for an offence non-possession of the driving license on the date of accident.

6. The learned counsel appearing for the appellant drew the attention of this Court to the Motor Vehicle Inspector's report wherein, it is observed that the driver of the car did not show the driving license to the Motor Vehicle Inspector.

7. In the instant case, the Insurance Company did not issue any notice to the driver and the owner of the vehicle to produce the driving license. On the contrary, in the counter filed by

the National Insurance Company, it is contended that the claimant alone drove his vehicle without any valid driving license. Thus, no specific plea was taken by the Insurance company that the driver of the car was not in possession of a valid driving license on the date of accident. In the circumstances, the Tribunal was right in coming to the conclusion that the driver of the car alone was responsible for the accident and this observation was also based on the oral / documentary evidence adduced by the claimant. Moreover, a charge sheet was also filed against the driver of the car for the offences punishable under Sections 279 & 338 of IPC. Therefore, I hold that the driver of the car was responsible for the accident and there is nothing on record to show that he drove the vehicle without any valid driving license on the date of accident. In the circumstances, the appellant is liable to pay compensation.

8. The Tribunal had considered the evidence of the doctor and other medical records for arriving at the just compensation payable to the claimant and by no stretch of imagination the same can be considered to be excessive in the facts and circumstances of the present case.

9. In the result,

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

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

(iv) The appellant, National Insurance Company Limited is directed to deposit the entire compensation awarded by the tribunal i.e., Rs.1,15,000/- (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.592 of 2006 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, claimants are at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

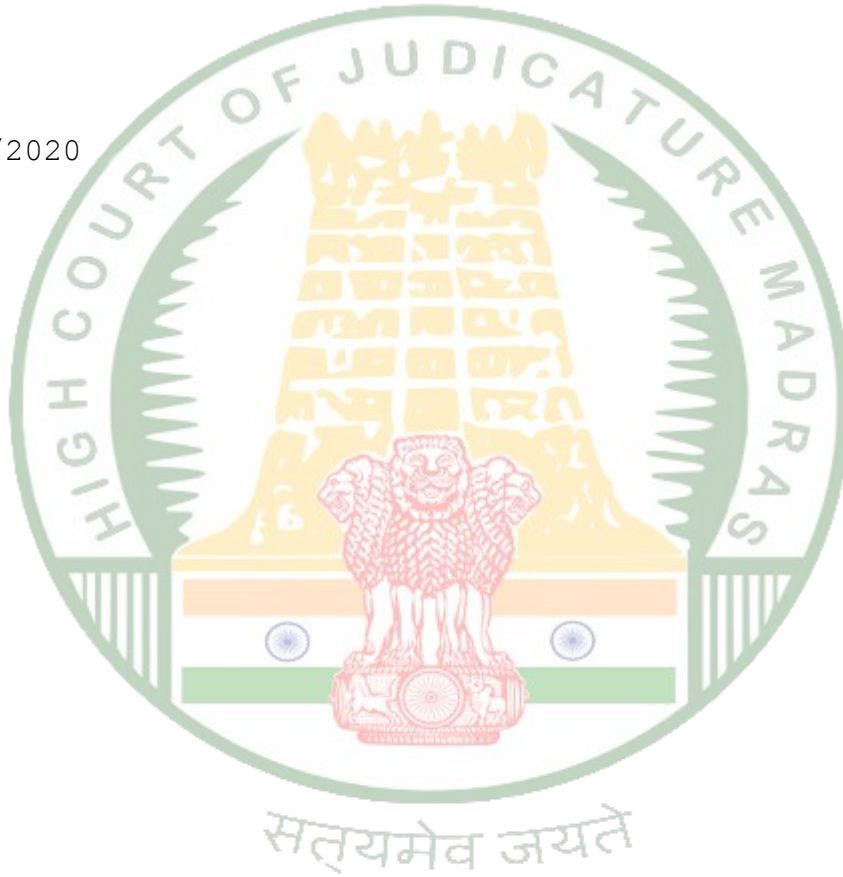
To

The Motor Accidents Claims Tribunal,
Fast Track Court No.3,
Dharapuram.

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.79047
+1cc to M/s.S.Vadivel, Advocate Sr.78685

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srg 06/03/2020



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