

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.200, 201 & 202 of 2011

National Insurance Co. Ltd.,
Salem Branch II,
Maruthi Complex,
F215, Omalur Main Road,
Swarnapuri. ... Appellant in all C.M.As

vs.

1.R.Parameswari ... 1st respondent in C.M.A.No.200 of 2011
1.M.Maheswari ... 1st respondent in C.M.A.No.201 of 2011
1.Minor M.Ragunath
rep by Mother M.Maheswari ... 1st respondent in C.M.A.No.202 of 2011
2.V.Ravichandran ... 2nd respondent in all C.M.As

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.10.2009 passed in M.C.O.P.Nos.1441, 1442 & 1443 of 2001 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

In all C.M.As:

Appellant : Mr.K.Padmanabhan

R1 : Mr.C.Thangaraju

R2 : No appearance

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COMMON JUDGMENT

The appellant, National Insurance Company Limited is the second respondent in M.C.O.P.Nos.1441, 1442 & 1443 of 2001 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal. The claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking

compensation for the injuries sustained by them in a road accident on 29.10.1999.

2. The parties are referred as per their ranking in the claim petitions and at appropriate places, their ranks in the present appeals would also be indicated.

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

On 20.10.1999, the claimants were travelling as passengers in a Mahindra van bearing Registration No. TN 28 E 6879 belonging to the first respondent and they were proceeding towards Tirunallar and at about 02.00 a.m, when the van was nearing Tiruvaroor Main Road, the driver of the van drove the vehicle rashly and negligently and applied sudden brakes, as a result whereof, the van toppled and the claimants sustained injuries.

4. According to the claimants, the rash and negligent driving of the driver of the van was the cause of the accident and that since the said van was insured with the present appellant / National Insurance Company Limited, the owner and the insurer of the van are jointly and severally liable to pay compensation.

5. The owner of the Mahindra van remained absent before the Tribunal and therefore he was set exparte. The appellant / National Insurance Company Limited contested the claim petitions on all the grounds available to the insured. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Namakkal while awarding compensation of Rs.93,000/-, Rs.87,000/-and Rs.83,000/- to the claimants in M.C.O.P.Nos.1441, 1442 & 1443 of 2001 respectively together with interest at the rate of 7.5% per annum, also concluded that since the driver of the Mahindra van was not in possession of a valid driving licence on the date of the accident, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the van. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.K.Padmanabhan, learned counsel appearing for the appellant and Mr.C.Thangaraju, learned counsel appearing for the first respondent. No appearance on behalf of the second respondent.

7. In the decisions in (i) New India 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).

8. In the facts and circumstances of the present cases, 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 van is perfectly in order.

9. 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 claimant. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeals fails and are dismissed.

10. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs.

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

(iii) The present appellant / National Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.93,000/-, Rs.87,000/-and Rs.83,000/- (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 M.C.O.P.1441, 1442 & 1443 of 2001 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal 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 Mahindra van bearing Registration No. TN 28 E 6879 on the same cause of action.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

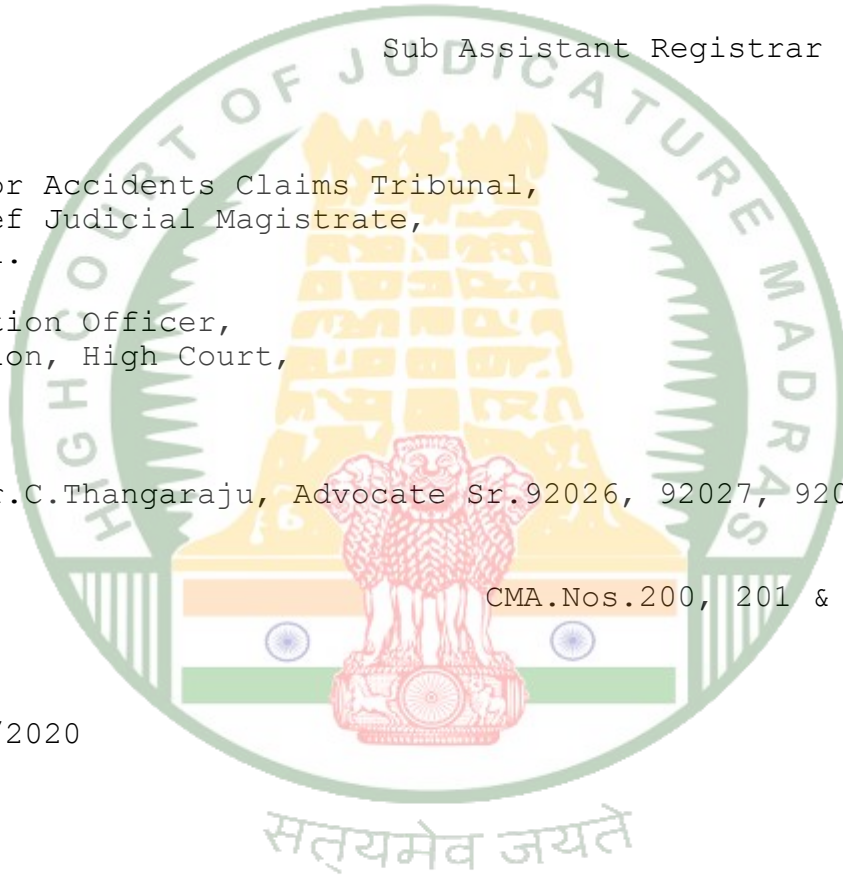
1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Namakkal.

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

+3cc to Mr.C.Thangaraju, Advocate Sr.92026, 92027, 92028

CMA.Nos.200, 201 & 202 of 2011

vba[co]
srg 07/08/2020



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