

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1771 of 2013
and M.P.No.1 of 2013

National Insurance Co. Ltd.,
1st Floor, Karthikeya Complex,
No.403, B-10, Mettur Main Road,
Bhavani

... Appellant /3rd Respondent

vs.

1.Thiru C.Saravanan
2.Thiru. Palani
3.Thiru V.Sethuraman
4. Thiru. R.Soundarajan

... Respondents/Petitioner
Respondents 1,2 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 28.04.2010 made in M.C.O.P.No.173 of 2008 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Bhavani, Erode District.

For Appellant : Mr.J.Chandran
For Respondents: Mr.Ma.P.Thangavel for R1
No appearance for R2 to R4

J U D G M E N T

The appellant / Insurance Company is the 3rd respondent in M.C.O.P.No.173 of 2008 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Bhavani, Erode District. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident which took place on 08.05.2007.

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

On 08.05.2007, the claimant was travelling as a pillion rider in a Motor Cycle bearing Registration No.TN-01-33-H-4104 on Vettakadu - Andhiyur Road, near Unjakkadu Gurunathaswamy Temple junction and at about 10.30 am, a speeding tractor

bearing Registration No.TN-36-K-2914 belonging to the 3rd respondent and insured with the present appellant hit the motor cycle, as a result of which, the claimant fell down from the motor cycle and sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Tractor belonging to the 3rd respondent was the cause for the accident and that since the said vehicle was insured with the present appellant, the 3rd respondent/owner of the Tractor and the insurer are jointly and severally liable to pay compensation.

3. The learned Subordinate Judge, Bhavani, Erode District / Motor Accident Claims Tribunal, while awarding a compensation of Rs.73,000/- together with interest at the rate of 7.5% per annum to the claimant, also held that the owner and the insurer of the Tractor, are jointly and severally liable to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.Ma.P.Thangavel, learned counsel appearing for the 1st respondent. No appearance for the respondents 2 to 4.

5. Mr.J.Chandran, learned counsel would contend that since the driver of the tractor was not in possession of a valid driving licence on the date of accident, the Tribunal was wrong in mulcting liability on the part of the Insurance Company.

6. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna and another vs. Divisional Manager, The Oriental Insurance Co. Ltd., and others in Civil Appeal No. 8144 of 2018, reported in 2018 (2) TN MAC 151 (SC), 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 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 instant case, a perusal of the copy of the final report Ext.P6 shows that the driver of the Tractor drove the vehicle without a valid driving licence and he was charge sheeted under Section 338 of IPC and Section 3 r/w. 181 of Motor Vehicles Act.

8. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Insurance Company to pay the award amount jointly and severally is liable to be set aside. However, the Insurance Company is directed to pay the award amount to the first respondent / claimant in the first instance and then recover the same from the owner of the Tractor bearing Registration No.TN-36-K-2914.

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.

10. In the result,

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

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

(iii) The present appellant / Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.73,000/- (less the amount already deposited if any) 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.No.173 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Bhavani, Erode District, within a period of four weeks from the date of receipt of a copy of this judgment and then recover the same from the 3rd respondent/owner of the Tractor bearing Registration No.TN-36-K-2914 on the same cause of action.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same, after following due process of law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge,
Bhavani, Erode District.

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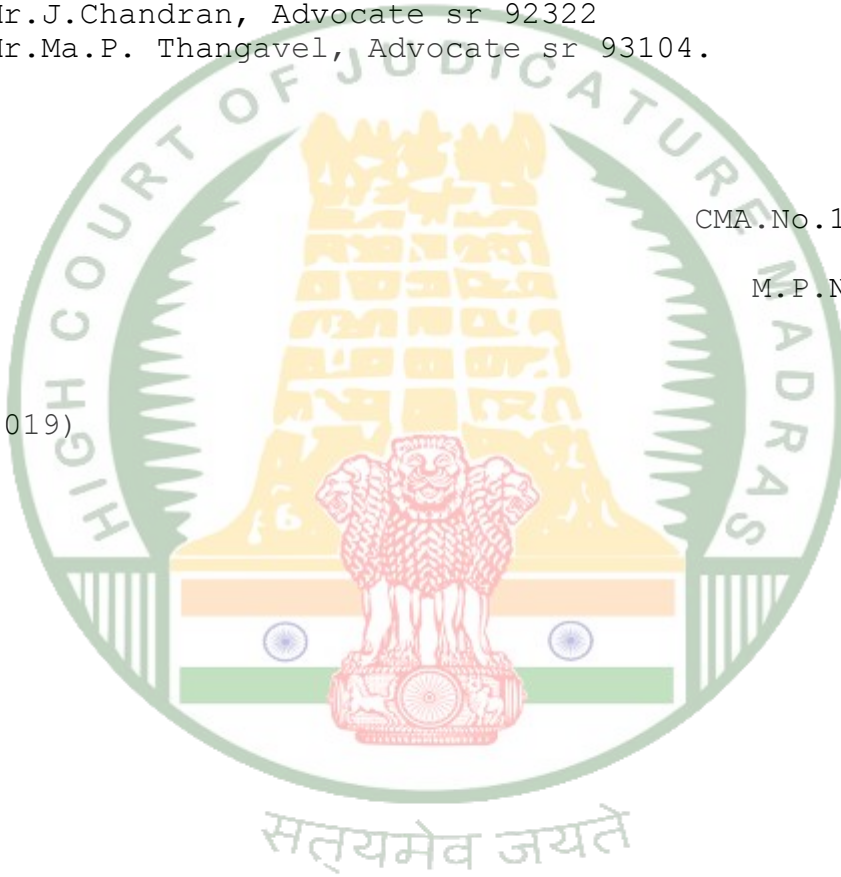
The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1 CC to Mr.J.Chandran, Advocate sr 92322

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 93104.

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and
M.P.No.1 of 2013

GJ(CO)
SP(16/12/2019)



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