

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.2565 OF 2013

AND

MP.NO.1 OF 2013

Branch Manager,
New India Assurance Co. Ltd.,
Tiruvannamalai.

...Appellant/2nd Respondent

vs.

1.Appadurai
2.K.Viswanath

... Respondents/Petitioners
& 1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.09.2011 passed in MCOP.No.133 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Tirupattur, Vellore.

For Appellant : Mrs.Elveera Ravindran

For Respondents : No appearance

J U D G M E N T

The Branch Manager, New India Assurance Company, the second respondent in MCOP.No.133 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Tirupattur, Vellore has filed the present appeal. The first respondent/claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 29.12.2007.

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

On 29.12.2007, the claimant was travelling as a passenger in an auto bearing Registration No. TN 32 B 6685 belonging to the second respondent and insured with the present appellant on Vadhanavadi - Thirupathur road and at about 09.30 am, when the

auto was nearing Nainampatti Junction, the driver of the auto drove the vehicle rashly and negligently, as a result whereof, the auto toppled and the claimant sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the auto belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the auto remained absent before the Tribunal and therefore he was set *ex parte*. The New India Assurance Company contested the claim petition on all the grounds available to the insured. The learned Additional District Judge, Fast Track Court/Motor Accident Claims Tribunal, Tirupattur, Vellore while awarding compensation of Rs.75,000/- together with interest at the rate of 7.5% per annum to the claimant, concluded that since the driver of the auto 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 auto. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mrs.Elveera Ravindran, learned counsel appearing for the appellant. No appearance for the respondents.

5. 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 New India 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 New India Assurance Company 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. 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 appeal fails and is dismissed.

8. In the result,

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

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

(iii) The present appellant/New India Assurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.75,000/- (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.133 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Tirupattur, Vellore 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 32 B 6685 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court,
Tirupattur, Vellore.

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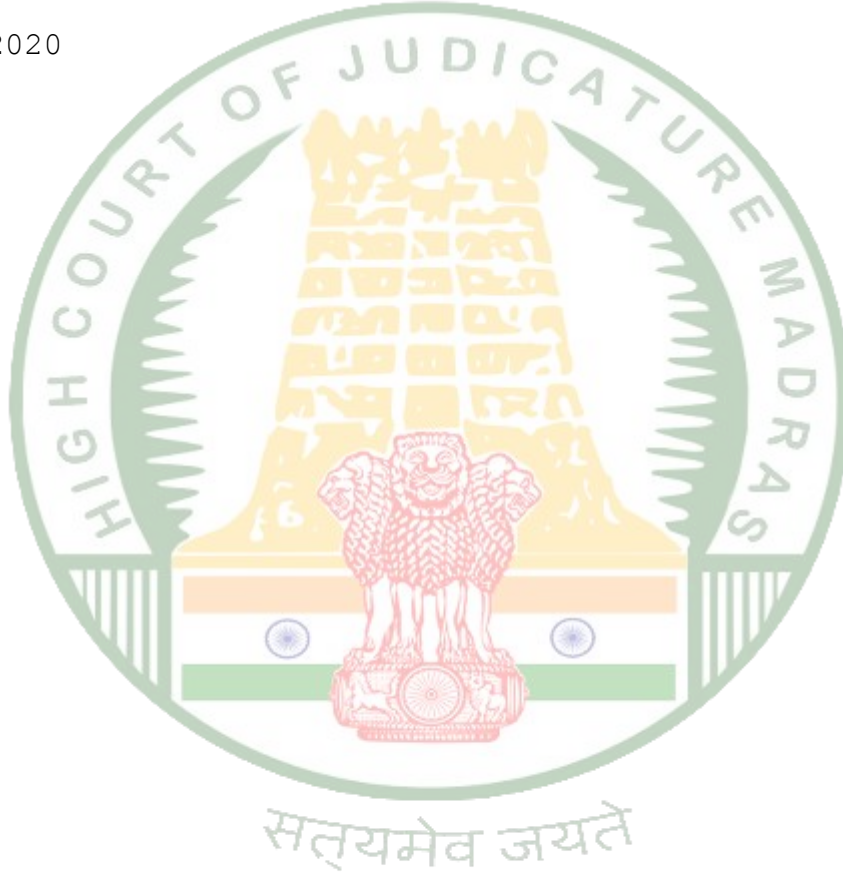
Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.88615

CMA.No.2565 of 2013
and
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SAI (CO)
CS/05/06/2020



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