IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.3073, 3074, 3075 & 3076 of 2013

Thiyagarajan ...Appellant in C.M.A.No.3073 of 2013

Muthusamy ...Appellant in C.M.A.No.3074 of 2013

Ganesan ...Appellant in C.M.A.No.3075 of 2013

Thulasiraman ...Appellant in C.M.A.No.3076 of 2013

vs.

1.Arumugam

2.The National Insurance Company Limited,
Represented by its Branch Manager,
Branch Office, 2nd Floor, No: 81-D, Chetti Street,
Opposite to Bus Stand, Thiruchengodu Taluk,
Namakkal District.
... Respondents 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 07.11.2009 passed in M.C.O.P.723, 724, 725 & 726 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Rasipuram.

In all C.M.As:

Appellant	:	Mrs.B.Devagi Thangavel
R1	:	Mr.N.Manoharan
R2	:	Mrs.R.Sreevidhya

C O M M O N J U D G M E N T

The appellants are the claimants in M.C.O.P.723, 724, 725 & 726 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Rasipuram. They filed the above M.C.O.Ps seeking compensation of Rs.5,00,000/- each for the injuries sustained by them, in a road accident on 20.05.2008.

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 claimant in nutshell is as follows:
On 20.05.2008, the claimants were travelling in Mahindra Maxi Cab bearing Registration No. TN 67 W 9010 on Paachal - Namakkal Road, and as a result of rash and negligent driving of the driver, the van toppled and the claimants sustained injuries all over their body.

4. According to the claimants, the owner of the van insured his vehicle with the second respondent / National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

5. The owner of the Mahindra Maxi Cab remained absent before the Tribunal and therefore he was set exparte. The second respondent / National Insurance Company Limited contested the claim petitions on all the grounds available to the insurer. The learned Subordinate Judge / Motor Accident Claims Tribunal, Rasipuram while awarding compensation of Rs.70,000/-, Rs.68,000/-, Rs.91,500/- and Rs.66,000/- respectively to the claimants together with interest at the rate of 7.5% per annum also concluded that since the driver of the Mahindra Maxi Cab was not in possession of a valid driving licence on the date of the accident, the Insurance Company is not liable to pay compensation to the claimants. The Tribunal directed the owner of the vehicle / the first respondent herein to pay compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Mrs.B.Devagi Thangavel, learned counsel appearing for the appellants would contend that the Tribunal was wrong in exonerating the liability of Insurance Company mainly on the ground that the driver of the Mahindra Maxi Cab was not in possession of a valid driving license on the date of accident.

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 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). Therefore, the Insurance Company should pay the compensation to the claimants and she would further contend that the Tribunal awarded meagre amount as compensation and the same have to be enhanced.

8. No arguments were advanced with regard to quantum of compensation awarded by the Tribunal and a perusal of the orders also shows that the award is not excessive.

9. In the result,

(i) The Civil Miscellaneous Appeals are partly allowed. No costs.

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

(iii) The order of the Tribunal exonerating the Insurance Company is set aside.

(iv) The second respondent / National Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.70,000/-, Rs.68,000/-, Rs.91,500/- and Rs.66,000/- 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.Nos.723, 724, 725 & 726 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Rasipuram 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 Maxi Cab / the first respondent herein on the same cause of action.

(v) On such deposit being made, the appellant in all C.M.As / claimants are at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Rasipuram.

Copy to: The Section Officer,
V.R.Section, High Court, Madras.(2)

+4CCs to Mr.N.Manokaran, Advocate, SR.Nos.89305, 89306, 89307 & 89308

+1cc to Ms.Sreevidhya, Advocate, SR.No.89485.
+1cc to Mr.P.Thangavel, SR.No.89363.

CMA.Nos.3073, 3074, 3075 & 3076 of 2013

SSV(CO)
CSR: 16/12/2019