

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.508 of 2014

National Insurance Company Ltd,
Branch Office,
No.7, Raja Street, P.B.No.19,
Gobichettipalayam, Erode

...Appellant/3rd Respondent

.Vs.

S.Rangasamy (died)
1.R.Chitra
2.R.Minor.Vigashini
3.R.Minor.Naresh
(Minors are represented by Mother and
Natural Guardian R.Chitra first respondent)

...Respondents 1 to 3/
Petitioners

4.P.Perumal
5.P.N.Natarajan

...4th & 5th Respondents/
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 21.12.2012 made in O.P.No.63 of 2009 on the file of the Motor Accidents Claims Tribunal (3rd Additional Sub Court), Coimbatore.

For Appellant : Mr.D.Bhaskaran
For Respondents : No Appearance

JUDGMENT

The appellant / National Insurance Company Ltd is the third respondent in MCOP.No.63 of 2009 on the file of III Additional Sub Court / Motor Accident Claims Tribunal, Coimbatore. The first respondent (since deceased) filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.21,20,040/- for the injury sustained by him in a road accident took place on 05.11.2007 when he was travelling as a passenger in a bus bearing Reg.No.TN 38 N 1248 belonging to the State Transport Corporation. According to him a speeding tempo van bearing Reg.No.TN 39 C 9181 belonging to the second respondent and insured with the present appellant hit the bus, as a result of which he sustained injuries all over his body. During the pendency of the claim petition, the claimant

died and therefore, his legal heirs were impleaded as claimants 2 to 4.

2. The learned III Additional Subordinate Judge, Coimbatore after analysing the evidence on record awarded a compensation of Rs.5,60,478/- to the claimants together with interest at the rate of 7.5% per annum. The Tribunal further held that since the driver of the tempo van was not having a valid driving licence on the date of accident, the present appellant should pay the compensation amount in the first instance and then recover the same from the owner of the tempo van bearing Reg.No. TN 39 C 9181. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Ltd has filed the present appeal.

3. In the decisions in Oriental 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 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, in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the decision rendered in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 has been followed.

4. Under the facts and circumstances, the orders passed by the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the vehicle is perfectly in order.

5. In the result,

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

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

(iii) The Appellant, National Insurance Company Limited is directed to deposit the compensation amount i.e., Rs.5,60,478/- (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.63 of 2009 on the file of the III Additional Sub Court / Motor Accidents Claims Tribunal, Coimbatore within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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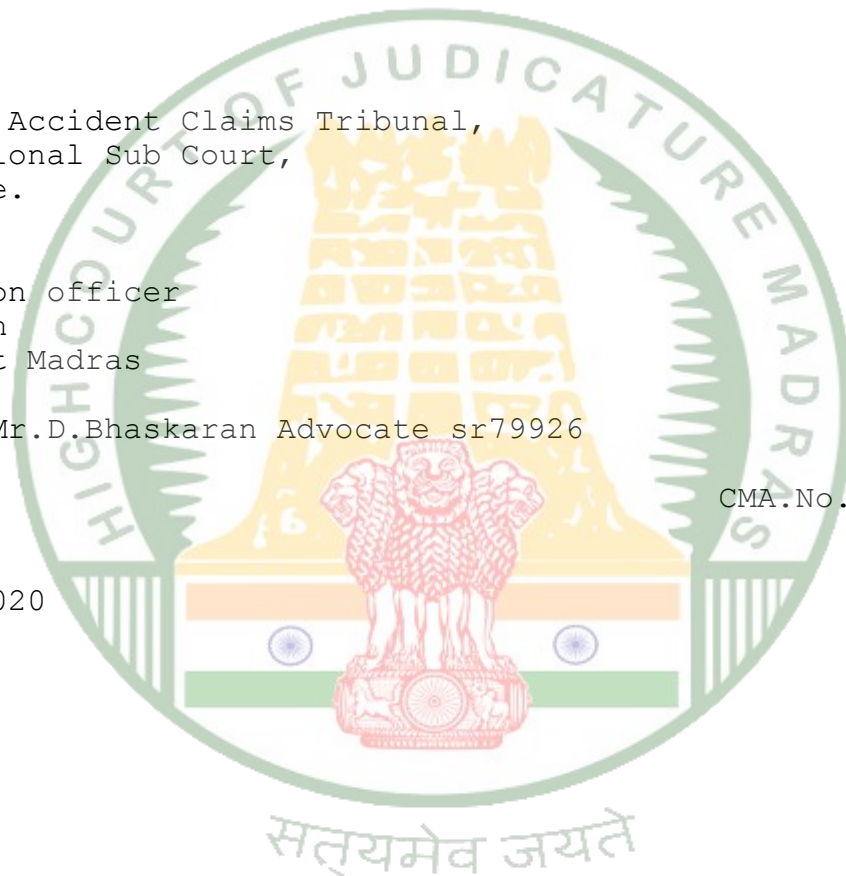
To
The Motor Accident Claims Tribunal,
III Additional Sub Court,
Coimbatore.

copy to
The Section officer
VR Section
High Court Madras

+1 cc to Mr.D.Bhaskaran Advocate sr79926

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