

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3071 and 3072 of 2017
and C.M.P.Nos.18590 and 18591 of 2017

National Insurance Company Ltd.,
Hosur, Krishnagiri District.

... Appellant in both the
appeals/2nd Respondent in
MCOP.No.in 13/10 & 35/10

Vs

Shajahan @ Settu

... 1st respondent in
C.M.A.No.3071/2017/
Petitioner in MCOP.No.13/10

Raja @ Thirumalai Raja

... 1st respondent in
C.M.A.No.3072/2017/
Petitioner in MCOP.No.35/10

M/s.Venkraft Paper Mills (P) Ltd.,
rep.by its Managing Director,
Subhas Chandra
No.28, Venkateshappa Layout
Saroja Pura Road,
Attibele Post, Aneka (Taluk)
Bangalore District.

... 2nd respondent in both
the appeals/ 1st
Respondent in MCOP.No.13 & 35/10

C.M.A.No.3071 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.08.2015 made in MCOP No.13 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Mettur.

C.M.A.No.3072 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.08.2015 made in MCOP No.35 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Mettur.

For Appellant	: Mrs.R.Sree Vidhya in both appeals
For Respondents	: Mr.R.Thirumurthy for R1 in both appeals No appearance for R2 in both appeals

COMMON JUDGMENT

The case in brief, is as follows:

On 11.04.2009 at about 04.15 p.m., the first respondent in C.M.A. No.3071 of 2017 was riding the bullet motorcycle bearing Reg.No.TN-27-Z-1446 along the left side of the Mettur - Bhavani Main Road. The first respondent in C.M.A.No.3072 of 2017 was travelling as pillion rider. When the motorcycle reached near Ramesh Mechanical Shop at Thookkanampatty, the TATA 709 mini lorry bearing Reg.No.KA-51-764 belonging to the second respondent in these appeals and insured with the appellant Insurance Company, which was stationed on the road, was suddenly returned by its driver in a rash and negligent manner without watching whether any vehicle was coming back. Due to the same, the mini lorry dashed against the bullet motorcycle and both the rider and the pillion rider of the motorcycle were thrown out. The first respondent in C.M.A.No.3071 of 2017 sustained injuries on his right chest, left wrist and his left leg got fractured. The first respondent in C.M.A.No.3072 of 2017 also sustained injuries in his left and right leg knee. The first respondent in C.M.A.No.3071 of 2017 filed a claim petition before the Tribunal in MCOP No.13 of 2010, claiming a sum of Rs.5,00,000/- as compensation. The first respondent in C.M.A.No.3072 of 2017 filed a claim petition before the Tribunal in MCOP No.35 of 2010, claiming a sum of Rs.6,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,60,045/- with interest at the rate of 7.5% per annum from the date of petition in respect of MCOP No.13 of 2010 (CMA No.3071 of 2017) and a total compensation of Rs.1,31,176/- with interest at the rate of 7.5% per annum from the date of petition in respect of MCOP No.35 of 2010 (CMA No.3072 of 2017).

2.Challenging the awards of the Tribunal, these Civil Miscellaneous Appeals have been filed by the Insurance Company.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal in both these appeals. She mainly emphasised that the Tribunal has erred in directing the Insurance Company to pay the compensation, without giving liberty to recover the same from the owner of the vehicle, since the fact remained that both the rider of the bullet motorcycle and the driver of the mini lorry were not possessing the valid driving licence to drive the respective vehicles.

4.The learned counsel for the first respondent in these appeals has submitted that the Tribunal has correctly considered the materials and evidence and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

5. Heard the learned counsel for the appellant and the learned counsel for the first respondent in these appeals and perused the materials available on record carefully and meticulously.

6. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the mini lorry and the said finding is not disputed by both sides. With regard to non-possession of valid driving licence, the Tribunal has observed that the driver of the mini lorry was having a driving licence valid up to 25.12.2026, but he did not have the endorsement of badge. Since the Insurance Company did not come forward to adduce any evidence before the Tribunal with regard to validity of insurance, permit and driving licence of the driver of the mini lorry, the Tribunal held that the appellant Insurance Company is liable to pay the compensation, being the insurer for the mini lorry. Even as per the observation of the Tribunal, even though the driver of the mini lorry was having a driving licence valid up to 25.12.2026, he did not have the endorsement of badge to drive a transport vehicle. Thus, there is violation of policy conditions on the part of the driver of the mini lorry.

7. In these circumstances, while confirming the quantum of compensation awarded by the Tribunal in respect of both the appeals, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, the second respondent herein, in accordance with law.

8. The Civil Miscellaneous Appeals are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

9. The appellant Insurance Company is directed to deposit the compensation amounts with interest, as ordered by the Tribunal, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant in both these appeals, are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge) at Mettur.

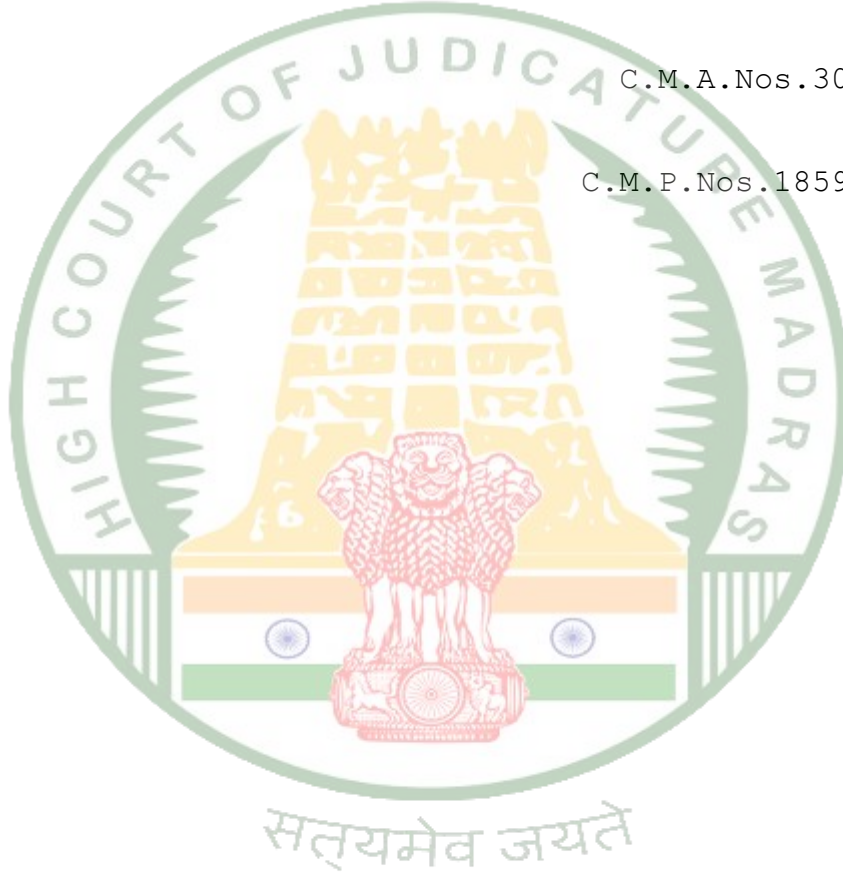
2.The Section Officer,
VR Section, Madras High Court.

+1 cc to M/s.R.Thirumoorthy, advocate,sr.84335

+1 cc to M/s.R.Sreevidhya, Advocate,sr.85762.

Sai (co)
krd 9/10

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