



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.02.2019
CORAM
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

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C.M.A. (MD) .Nos. 125 & 126 of 2019
and C.M.P. (MD) .No. 1513 of 2019

C.M.A. (MD) .No. 125 of 2019

Bajaj Allianz General Insurance Company Limited,
No.142/7, 1st Floor, Sri Bajaj Arcade,
Thiruvananthapuram Road, Murugankurichi,
Palayamkottai, Tirunelveli 627 002.

... Appellant/2nd Respondent

Vs.

- | | |
|----------------------|--|
| 1. P. Saraswathi | |
| 2. Minor.P.Muthukala | |
| 3. Sakkaraiammal | ...Respondent-1 to 3/Petitioners |
| 4. C. Ilango | ...4 th respondent/1 st respondent |

(2nd minor respondent is represented by her mother
and her next friend, 1st respondent).

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 19.01.2016 made in M.C.O.P.No. 137 of 2014, on the file of the Motor Accident Claims Tribunal (II Additional District Court, Thoothukudi).

C.M.A. (MD) .No. 126 of 2019

Bajaj Allianz General Insurance Company Limited,
No.142/7, 1st Floor, Sri Bajaj Arcade,
Thiruvananthapuram Road, Murugankurichi,
Palayamkottai, Tirunelveli 627 002. ... Appellant/2nd Respondent

Vs.

- | | |
|-------------------|---|
| 1. K. Gunasekaran | ... 1 st Respondent/Petitioner |
| 2. C. Ilango | ... 2 nd respondent/1 st respondent |

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 19.01.2016 made in M.C.O.P.No 229 of 2014, on the file of the Motor Accident Claims Tribunal (II Additional District Court), Thoothukudi.

For Petitioner : J.S. Murali, in both CMAs

COMMON ORDER

C.M.A (MD) No.125 of 2019 has been filed by the
appellant/2nd respondent against the award and decree, dated



19.01.2016 in M.C.O.P. No.137 of 2014 passed by the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

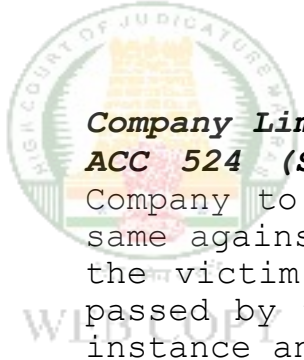
C.M.A (MD) No.126 of 2019 has been filed by the appellant/2nd respondent against the award and decree, dated 19.01.2016 in M.C.O.P. No.229 of 2014, passed by the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

Before the tribunal, the respondents-1 to 3 herein in C.M.A.(MD) No.125 of 2019 are the petitioners/claimants in M.C.O.P. No.137 of 2014 and the first respondent herein in C.M.A.(MD) No.126 of 2019 is the petitioner/claimant in M.C.O.P. No.229 of 2014.

2. When the matter came up for admission, the learned counsel appearing for the Insurance company who is the appellant herein denied their liability on the basis that at the time of accident the offending vehicle's driver has not holding valid driving license. He further stated that the accident was occurred on the part of the rash and negligent driving of the driver of the offending vehicle. The tribunal after analysing the documents and evidences and fixed the liability that the petitioner herein/insurance company is liable to pay compensation. He further stated that the offending vehicle driver of the first respondent has not been examined as witness.

3. The appellant herein aggrieved against the liability and also a sum awarded by the tribunal, they preferred these appeals. The main ground for preferring the appeal is that the Tribunal has grossly erred in not holding that the owner of the vehicle has entrusted the appellant insured vehicle car to his son who did not possess valid and effective driving license to drive the offending vehicle at the time of accident and therefore, the appellant/insurance company has no legal obligation to indemnify the owner of the vehicle. He further contended that the tribunal has not considered the relevant documents filed by the appellant/insurance company. He further contended that the claims tribunal did not consider that if the breach of the policy condition by the owner of the vehicle is proved through oral and documentary evidence, the insurer has to be exonerated and the entire liability has to be fastened on the owner of the vehicle and the award amount awarded by the tribunal is very excessive.

4. On perusal of the records and also the contention raised by the appellant/insurance company, the injured and the deceased are no way connected to the violation of policy conditions. At the time of accident, the driver of the offending vehicle did not have any license to drive the car. It is well settled that the person, who caused accident did not possess license to drive car, the insurance company is liable to pay compensation at the first instance and recover the same from the owner of the vehicle. The principle is followed so that the injured or the dependents of the deceased should not suffer and they may not be in a position to recover the amount. The Hon'ble Apex Court in the case of **Oriental Insurance**



Company Limited, Vs. Shri Nanjappan and Others, reported in I (2004) ACC 524 (SC), held that it is not necessary for the Insurance Company to file separate suit for obtaining decree and execute the same against the owner and recovery the compensation paid by them to the victim. In view of the same, there is no error in the order passed by the Tribunal directing the appellant to pay at the first instance and recover the same from the owner of the vehicle.

5. On perusal of the award amount passed by the tribunal under the various heads are also very much reasonable and need not modify the award amount.

6. In the result, the Civil Miscellaneous Appeals are partly allowed. The first respondent in M.C.O.P. No.137 of 2014 represented that he has deposited the entire award amount in which Execution Proceeding is pending. In M.C.O.P. No.229 of 2014, the 2nd respondent/Insurance company is directed to deposit the entire award amount within 4 weeks, from the date of receipt of a copy of this order and recover the same from the first respondent/owner of the vehicle. The claimant is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Motor Accident Claims Tribunal,
II Additional District Court,
Thoothukudi.

+2cc to Mr.J.MURALI, Advocate, SR.No. 47369,47368

**C.M.A. (MD) .Nos.125 &
126 of 2019**

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KK/SAR/16.07.2019/3P-4C

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