



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.844 of 2013

and

M.P.(MD).No.1 of 2013

M/s.National Insurance Company Limited,
through its Divisional Manager,
Opp. to District Court,
Sub Collector Office Road,
Dindigul.

... Appellant/ 3rd respondent

Vs.

1.Prianga

... 1st respondent/ Claimant

2.P.Rengasamy

... 2nd respondent/ 1st respondent

3.A.Prabakaran

... 3rd respondent/ 2nd respondent

(The first respondent declared as major and the guardianship of the 1st respondent viz., Manikandan is discharged, vide Court order dated 04.10.2018 made in C.M.P.(MD).No.9312 and 9313 of 2018)

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 01.10.2010, passed in M.C.O.P.No.7 of 2007 by the Chief Judicial Magistrate cum Motor Accident Claims Tribunal, Dindigul.

For appellant : M/s.P.Malini

For 1st respondent : Mr.A.Saravanan

For respondents 2 & 3 : No appearance

JUDGMENT

It is a case of injury. The manner of the accident is not in dispute. The claimant filed the claim petition claiming Rs.2 lakhs as compensation. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.75,500/- as



compensation with 7.5% interest per annum from the date of petition till the date of realization. The Tribunal has directed the appellant / Insurance Company to pay the entire compensation amount and thereafter, to recover the same from the respondents 2 and 3 herein, who are rider and owner of the vehicle which caused the accident. Now, the appellant / Insurance Company has filed this appeal only questioning the liability.

2. The learned counsel appearing for the appellant / Insurance Company would submit that the Insurance Company is not liable to pay the compensation, as the 2nd respondent herein had no valid driving license at the time of the accident, thereby he violated the policy condition. Thus, he prayed to exonerate the Insurance Company from the payment of compensation to the claimant.

3. The learned counsel appearing for the claimant would submit that considering the above contention raised by the appellant/Insurance Company, the Tribunal has already ordered for pay and recovery and therefore, the award passed by the Tribunal need not be interfered with. Thus, he prayed to dismiss this appeal.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. As per the evidence of RW1, the rider of the two wheeler viz., the 2nd respondent herein was issued with driving license on 07.11.1995 and the same was in force till 06.06.2005 and thereafter, he failed to renew the license. To that effect, the concerned RTO has also issued a certificate and the same is marked as Ex.R1. The 2nd and 3rd respondents herein remained *ex parte* before the Tribunal as well as before this Court. The Tribunal, relying upon the decision of a Full Bench of this Court in Branch Manager, United India Insurance Company Limited Vs. Nagammal and others, has ordered for pay and recovery. In the case of **Oriental Insurance Company Limited Vs. Nanjappan and others**, reported in **2004(2) CTC 464**, the Hon'ble Supreme Court has held that even if there is any violation of policy condition, in respect of the claim made by the third parties, the Insurance Company has to pay the award amount to the claimant at the first instance and thereafter, to recover the same from the owner of the vehicle. Therefore, this Court does not find any reason to interfere with the above finding of the Tribunal. Hence, the award passed by the Tribunal is liable to be confirmed.

6. In view of the above, this Civil Miscellaneous Appeal is dismissed. The appellant / Insurance company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same by filing an application before the



7. This Civil Miscellaneous Appeal is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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/TRUE COPY/

Sd/-

Assistant Registrar(CS-III)

Sub Assistant Registrar

To

The Chief Judicial Magistrate - Cum -
Motor Accident Claims Tribunal,
Dindigul.

COPY TO:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.P.MALINI, Advocate (SR-72391[F] dated 01/07/2019)

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gcg

JM/08.08.2019/3P-5C