

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2680 of 2013 &
M.P.No.1 of 2013

The National Insurance Company Limited,
The Branch Manager,
Vikneshwara Building,
7, Pudhukottai Road,
Trichirapalli

... Appellant/2nd Respondent

vs.

1.Lakshmi
2.Thaili Ammai
3.Priya
4.Prakash

... Respondents 1 to 4/Petitioners 1 to 4

5.Chinamani ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MACTOP.No.529 of 2008 dated 30.04.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.A.A.Venkatesan for R1 to R4
R5 - No appearance

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the insurance company challenging the impugned award dated 30.04.2012 passed by the Motor Accident Claims Tribunal (Additional District Judge, Ariyalur) in MCOP.No.529 of 2008.

2. Heard Mrs.N.B.Surekha, learned counsel for the Appellant and Mr.A.A.Venkatesan, learned counsel for the respondents 1 to 4. Despite service of notice on the fifth respondent, there is

no representation on his side.

3. The Appellant insurance company has not challenged the quantum of compensation awarded by the Tribunal and has challenged only its liability to pay the assessed compensation to the respondents 1 to 4 who are the claimants in MCOP.No.529 of 2008 before the Motor Accident Claims Tribunal.

4. The Tribunal under the impugned award has directed the Appellant insurance company to pay the respondents 1 to 4 a sum of Rs.3,21,000/- as compensation together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income	2,64,000/- (3000 - 1/3 = 2000 x 12 x 11)
Loss of consortium	15,000/-
Loss of love and affection	40,000/-
Transportation	2,000/-
Total	3,21,000/-

5. With regard to the quantum of compensation assessed by the Tribunal, the Appellant has not raised any ground in their grounds of appeal. The only contention raised by them is that the driver of the insured motorcycle was not possessing a driving licence at the time of the accident.

6. Before the Tribunal, the claimants have filed three documents which were marked as Ex.P1 to Ex.P3 and two witnesses were examined on their side namely the wife of the deceased as PW1 and an eyewitness to the accident as PW2. On the side of the Appellant/insurance company, four documents were filed which were marked as Ex.R1 to Ex.R4 and three witnesses were examined namely RW1 - Motor Vehicle Inspector Grade-II, RW2 - the Manager of the Appellant insurance company, RW3 - an Investigator of the Appellant insurance company.

7. As seen from the exhibits marked on the side of the Appellant insurance company, it is clear that despite the insurance company calling upon the (insured) owner of the vehicle namely the fifth respondent herein to produce the driver licence, he has failed to produce a copy of the driving licence of the rider of the motorcycle who caused the accident. Ex.R1 is the MVI report for the insured vehicle. As seen from the MVI

report, despite the Motor Vehicle Inspector calling upon the owner of the vehicle to produce the driving licence of the rider who caused the accident, the same was not produced by him. Ex.R2 is the notice sent by the Appellant/insurance company to the (insured) owner of the vehicle namely the fifth respondent herein, calling upon him to produce the driving licence of the rider of the motor cycle who caused the accident. Ex.R3 is the acknowledgement card for the said notice from the (insured) fifth respondent herein. Despite request made by the Appellant insurance company, the fifth respondent has failed to produce a copy of the driving licence of the rider of the motorcycle who caused the accident. The fifth respondent (insured) also remained exparte before the Tribunal. The Appellant insurance company has conclusively established before the Tribunal that the rider of the motorcycle which was owned by the fifth respondent (insured) was not possessing a driving licence at the time of the accident.

8. The Tribunal under the impugned award has also observed that no licence was produced by the owner of the motorcycle (insured) as seen from the MVI report which was marked as Ex.R1. However, the Tribunal contrary to the settled position of law has not awarded pay and recovery rights to the Appellant.

9. It is settled law that in case, a driver/rider was not possessing a driving licence at the time of the accident, the insurance company will have to pay the compensation amount and recover the same from the (insured) owner of the vehicle. Contrary to the settled law, the Tribunal has not granted pay and recovery rights to the Appellant. Since the quantum of compensation awarded by the Tribunal has not been challenged in this Appeal, the same is not disturbed by this Court and this Court also finds the compensation awarded by the Tribunal is a just compensation.

Conclusion:

10. For the foregoing reasons, this appeal is partly allowed by granting pay and recovery rights to the Appellant insurance company. No costs. Consequently, connected miscellaneous petition is closed.

11. It is represented by the learned counsel for the Appellant insurance company that the entire award amount has already been deposited by the Appellant. In view of the said submission, the Appellant insurance company is permitted to recover the said amount from the (insured) owner of the vehicle in accordance with law and the Tribunal is directed to transfer the respective shares of award amount along with accrued interest lying to the credit of MCOP.No.529 of 2008 to the bank

accounts of the respondents 1 to 4/claimants through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

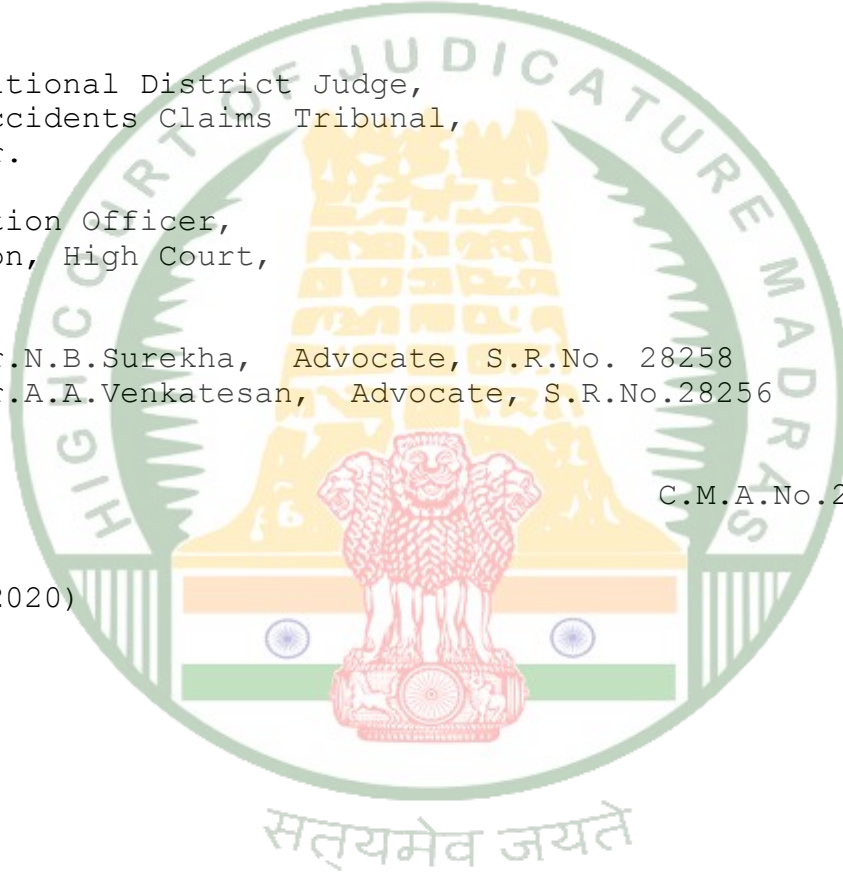
2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 28258

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.28256

C.M.A.No.2680 of 2013

NMI (CO)
GN(06/11/2020)



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