

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3630 of 2014
and M.P.No.1 of 2014

The National Insurance Company Limited,
Branch Office at Divisional Office,
66, Perundurai Road,
Erode - 11.

...Appellant/3rd Respondent

vs.

1.R.Ponnuswamy ...Respondent/ Petitioner

2.C.Munuswamy ... Respondent/1st Respondent

3.S.Devarasu ... Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in MACT.O.P.No.217 of 2008 dated 16.09.2010 on the file of the Motor Accidents Claims Tribunal, 1st Additional Subordinate Court, Erode.

For Appellant : Ms.N.B.Surekha
For Respondents : Mr.V.Ragunathan for R1
Not ready in notice reg. R2
R3 - served - No appearance

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 16.09.2010 passed by the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Erode, in M.C.O.P.No.217 of 2008.

2.Heard Ms.N.B.Surekha, learned counsel for the Appellant, Mr.V.Ragunathan, learned counsel for the first respondent.

3.Before the Tribunal, the first respondent/claimant has filed 9 documents which were marked as Exs.P1 to P9 and three witnesses were examined on his side namely the first respondent/claimant himself as PW1 and two Doctors who

examined him namely PW2 and PW3. On the side of the Appellant Insurance Company, one document was filed namely, the Insurance Policy which was marked as R1 and two witnesses were examined on their side namely RW1 and RW2. The Tribunal has also marked the driving license as Court exhibit C1.

4.The Tribunal after perusing the materials and evidence available on record has directed the Appellant Insurance Company to pay the claimant a sum of Rs.62,500/- together with interest and cost.

5.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Pain and suffering	-	Rs.5,000/-
Extra nourishment	-	Rs.2,000/-
Attender charges	-	Rs.2,000/-
Transportation	-	Rs.500/-
Loss of income for one month	-	Rs.3,000/-
Medical expenses	-	Rs.10,000/-
Towards 20% disability at the rate of Rs.2,000/-	-	Rs.40,000/-

Total		Rs.62,500/-

6.In this appeal, the Appellant Insurance Company has not the challenged the quantum of compensation awarded by the Tribunal but they have challenged the Award only on the following grounds:

(a) The first respondent/claimant was not possessing a valid driving license to drive a tourist taxi at the time of the accident (insured vehicle).

(b) The first respondent was under the influence of alcohol at the time of the accident and hence they are not liable to compensate the claimant.

7.Insofar as the first contention raised by the Appellant Insurance Company with regard to the driving license is concerned, the said issues is now well settled by the Hon'ble Supreme Court in the case of Mukund Dewangan reported in (2016) 4 SCC 298 wherein the Hon'ble Supreme Court held that once the unladen weight (insured vehicle) is less than 7500 kgs and the driver was possessing a valid LMV license, there is no necessity for separate badge endorsement in the driving license. Therefore, the Insurance Company is liable to compensate the claimant despite the fact that there was no badge endorsement in the driving license. In view of the settled position of law, the first contention raised by the Appellant Insurance Company is rejected by this Court.

8.Insofar as the second contention raised by the Appellant Insurance Company that the first respondent/claimant was under the influence of alcohol is concerned, the said contention will also have to be rejected for the following

reasons:

(a) Even though, the FIR (Ex.P1) was registered against the first respondent/claimant which reveals that the first respondent/claimant was under the influence of alcohol, the Appellant Insurance Company has not filed any Breath Analyzer report as required under Section 185 of the Motor Vehicles Act. Section 185 of the Motor Vehicles Act reads as follows:

185. Driving by a drunken person or by a person under the influence of drugs.- Whoever, while driving, or attempting to drive, a motor vehicle,-

[(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, [or in any other test including a laboratory test] or]

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine [of ten thousand rupees], or with both; and for a second or subsequent offence, [***], with imprisonment for a term which may extend to two years, or with fine [of fifteen thousand rupees], or with both.

9.It is also not known whether the Police have filed a charge sheet pursuant to the registration of FIR against the first respondent/claimant. The Appellant Insurance Company has also not filed the same before the Tribunal.

10.In view of the aforementioned reasons, the Appellant Insurance Company has not established before the Tribunal that the first respondent/claimant was under the influence of alcohol at the time of the accident. The Tribunal has rightly considered the materials and evidence available on record and has rightly rejected the contention of the Appellant.

11.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

12.Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company as well as the respondents 2 and 3 jointly and severally are directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of MACT.O.P.No.217 of 2008, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Erode, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the

Award amount directly to the bank account of first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

pam

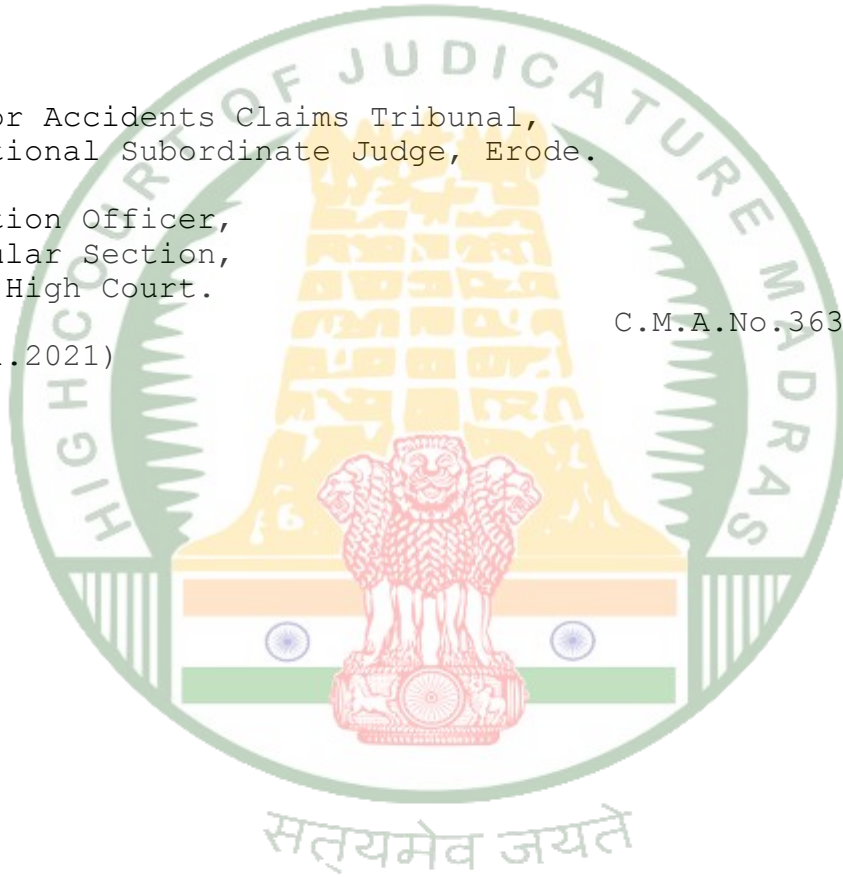
To

1.The Motor Accidents Claims Tribunal,
I Additional Subordinate Judge, Erode.

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

A.SK(07.01.2021)

C.M.A.No.3630 of 2014



WEB COPY