

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.934 of 2014

1. Sampooranam
 2. Saraswathi
 3. Kasthuri
 4. Paranthaman
 5. Indragandhi
 6. Sujatha ...Appellants/Petitioners
- vs.
1. A.Mariyappan
 2. The Divisional Manager
The National Insurance Company Ltd.,
No.19, Officers Line,
Opposite to Lakshmi theatre, Vellore.
... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 26.08.2011 made in MCOP.No.100 of 2011 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court) Vellore.

For Appellants : Mr.M.Sivakumar

For Respondents : R1 - Not claimed
Mr.S.Arun Kumar for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimants challenging the Award dated 26.08.2011 passed by the Motor Accident Claims

Tribunal, (Additional District and Sessions Judge, Fast Track Court) Vellore in MCOP.No.100 of 2011.

2. Heard Mr.M.Sivakumar, learned counsel for the Appellants and Mr.S.Arun Kumar, learned counsel for the second respondent.

3. The claimants have challenged the award only on the ground that the Tribunal has erroneously exonerated the liability of the second respondent/Insurance Company on the ground that the rider of the Auto rickshaw (insured vehicle) was not possessing the driving license at the time of accident. As seen from the impugned award, the respondents have not disputed the cause of the accident. The FIR has also been registered only against the driver of the Auto rickshaw owned by the first respondent and insured with the second respondent. The death of Mr.Kannan as a result of the aforesaid accident has also not been disputed by the respondent before the Tribunal. The appellants are the legal heirs of the deceased Mr.Kannan which has also not been disputed by the respondents before the Tribunal.

4. It is now settled law as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company vs. Swaran Singh & Others reported in 2004 (3) SCC 297 that if the driver / rider of the insured vehicle was not possessing driving license at the time of accident, the Insurance Company has to compensate the claim as assessed by the Tribunal and recover the same from the (Insured) owner of the vehicle, in case the claimant is a third party. In the instant case, admittedly the claimants who are the appellants herein are a third party and the driver of the Auto rickshaw (Insured vehicle) was not possessing the driving license at the time of the accident. As per the settled possession of law, the Tribunal ought to have directed the second respondent/Insurance Company to pay the compensation amount and recover the same from the first respondent who is the owner of the vehicle (insured). However, by an erroneous finding, the Tribunal has exonerated the second respondent/insurance Company absolutely.

5. For the foregoing reasons and as per settled law, the appeal filed by the claimants is allowed and the second respondent is directed to deposit the entire award amount as assessed by the Tribunal together with the accrued interest from the date of claim till the date of deposit, after deducting the amount already deposited if any, to the credit of MCOP.No.100 of 2011 within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the second respondent/ Insurance Company is permitted to recover the said amount from the first respondent by filing an execution petition before the same Tribunal. On such deposit being made,

the Tribunal is directed to transfer the respective shares of award amount along with accrued interest to the bank accounts of the Appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

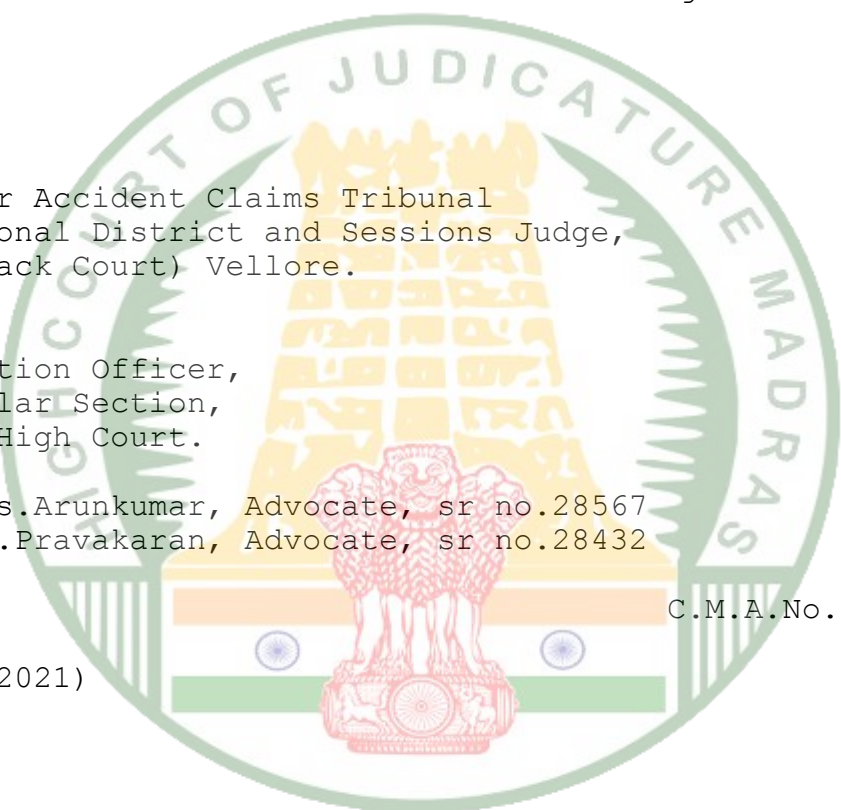
1.The Motor Accident Claims Tribunal
(Additional District and Sessions Judge,
Fast Track Court) Vellore.

Copy To:
The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.Arunkumar, Advocate, sr no.28567
+1cc M/s.C.Pravakaran, Advocate, sr no.28432

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GP(CO)
RMP(28/04/2021)

The seal of the Madras High Court is a circular emblem. It features a central golden temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant capital. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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