



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: **03.11.2020**

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**  
**C.M.A(MD)NO.305 of 2006**

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The Branch Manager,  
M/s.United India Insurance Company Limited,  
No.54-A, Palani Road,  
Dindigul Town and District.

:Appellant/Respondent No.2 in M.C.O.P

.vs.

1.M.Maruthamuthu :Respondent No.1/Petitioner in M.C.O.P

2.M.Ramasamy(died) :Respondent No.2/Respondent No.1 in M.C.O.P

3.Lakshmi

4.Ganapathi

5.Radhakrishnan

6.Ayyanar

7.Thialammal

8.Vijayalakshmi :Respondents 3 to 8/Legal  
Representatives of the second respondent

(R3 to R8 were brought on record as Legal Representatives  
of the deceased second respondent as per order made in C.M.P(MD)  
No.7976 to 7978 of 2017 in C.M.A(MD)No.305 of 2006, dated 3.11.2020)

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act praying this Court to set aside the judgment and  
decree passed against the appellant in M.C.O.P.No.11 of 2002, dated  
26.10.2004, on the file of the Motor Accident Claims Tribunal(Sub-  
Court),Srivilliputhur.

For Appellant :Mr.N.Murugesan

For Respondent-1 :Mr.S.Nambi Arooran  
for M/s.Ajmal Associates

For Respondents :Mr.S.Sarvagan Prabhu  
3 to 8



## JUDGMENT

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Being dissatisfied with the award passed by the Motor Accident Claims Tribunal/Sub-Court, Srivilliputhur in M.C.O.P.No.11 of 2002, dated 26.10.2004, the present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company.

### 2.The facts in brief are as follows:

The first respondent herein as claimant, filed M.CO.P.No.11 of 2002 claiming compensation of Rs.1 lakh on the ground that on 27.10.2000 at about 10.00 a.m., when he was proceeding from east to west direction, at Alagapuri Village, Vendasandur Taluk, a van bearing Registration No.TN 57D 0079 dashed against him. In the accident, he sustained injuries and immediately he was taken to Dindigul City Hospital where he took treatment as inpatient for 1 ½ months. In this regard, a criminal case was registered against the driver of the van. The claimant further stated that he was a business man dealing with cattle and thereby earning Rs.3,000/- p.m and he spent about Rs.60,000/- towards medical expenses.

3.The owner of the vehicle remained exparte and the case was contested by the appellant/Insurance Company disputing the age, avocation and income, as claimed by the first respondent/claimant herein. It is specifically stated that the driver of the van was not possessing a valid driving licence at the relevant point of time and hence they are not liable to pay the compensation to the claimant.

4.Before the Tribunal, on behalf of the claimant, two witness were examined and 11documents were marked. On the side of the respondent/Insurance Company, two witnesses were examined and Ex.R1 to Ex.R8 were marked. After analyzing the evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the van was responsible for the accident and awarded a compensation Rs.35,000/- together with interest at 9% p.a. Challenging the same, the present Civil Miscellaneous Appeal is filed.

5.Mr.N.Murugesan, learned counsel appearing for the appellant/Insurance Company would submit that though the appellant/Insurance Company has taken a specific plea that they are not liable to pay the compensation on account of non availability of valid driving licence to the driver of the van, the Tribunal has wrongly fixed the liability on the Insurance Company. It is further contended that the appellant had examined an Assistant from the Regional Transport Office as R.W.2 to establish their case that the driver of the van did not have the valid driving licence at the time of accident. The appellant also produced the documents to show that despite letter being sent to the owner of the vehicle for production of licence, there was no response.



6.Per contra, the learned counsel appearing for the respondents 3 to 8 would contend that admittedly, on the date of accident, the vehicle had the policy in force and the onus to prove that the driver of the van did not possess valid driving licence is on the appellant/Insurance Company and the appellant had failed to discharge their burden and hence prayed to dismiss the appeal.

7.In the matter on hand, the first respondent who was claimant in M.C.O.P, has not preferred any appeal claiming enhancement of compensation. It is contended by the appellant/Insurance Company that the owner of the vehicle did not co-operate with them and in order to prove that the driver of the offending vehicle was not having valid driving licence, the Insurance Company has discharged their burden by examining R.W.1 and R.W.2 and by marking Exs.R1 to R8.

8.A perusal of the evidence adduced by the appellant would show that they have taken all steps to discharge their burden of proof, however, the owner of the van was non-cooperative. Admittedly, the licence of the driver of the offending vehicle was not produced before the Court for perusal by the owner of the vehicle.

9.It is not in dispute that the claimant is a third party. It is settled law that if any of the policy condition is violated, in respect of the third party claim, the insurer is liable to satisfy the award first and can recover the amount from the insured. It appears that the award is fair and reasonable.

10.In the light of the above facts, while confirming the quantum, this Court directs the appellant/Insurance Company to pay the entire award amount with accrued interest and costs to the claimant at the first instance and then to recover the same from the owner of the vehicle. It is represented that the entire award amount has already been deposited to the credit of M.C.O.P.No.11 of 2002 and in view of the dismissal of the appeal, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interest and costs by filing necessary application before the Tribunal.

11.Accordingly, the Civil Miscellaneous Appeal is dismissed with the above modification. No costs.

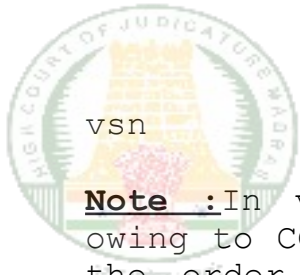
Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)



**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Subordinate Judge,  
Motor Accident Claims Tribunal,  
Srivilliputhur.
2. The Record Keeper, (2 copies)  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.N.Murugesan, Advocate Sr.No.21223  
+1cc to M/s.Ajmal Associates, Sr.No.21204

**JUDGMENT MADE IN**  
**C.M.A(MD)NO.305 of 2006**  
**03.11.2020**

VB (09.02.2021) 4P 6C