



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 10.03.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD) No.1398 of 2011**

**and M.P(MD)No.2 of 2011**

**WEB COPY**

The Divisional Manager,  
National Insurance Co., Ltd.,  
Divisional Office,  
Jerome Buildings,  
Trichy-2.

.. Appellant/Respondent No.2

vs.

1.Sivalingam

.. Respondent-1/petitioner

2.Pon Pandi

.. Respondent-2/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order, dated 28.02.2008 made in MCOP No.2705 of 2000 on the file of the Motor Accidents Claims Tribunal (Fast Track Court-II/Addl.District Judge), Trichy and allow this Civil Miscellaneous Appeal.

|               |                          |
|---------------|--------------------------|
| For Appellant | : Mr.S.Srinivasaraghavan |
| For R1        | : Mr.P.Arun Jayatram     |
| For R2        | : No appearance          |

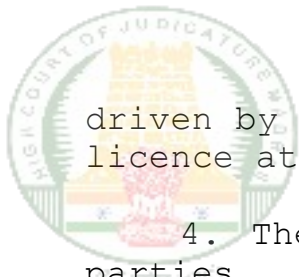
### **J U D G M E N T**

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (Fast Track Court-II/Addl.District Judge) Trichy in M.C.O.P.No.2705 of 2000, wherein, for the claim of Rs.3,00,000/- the Tribunal has awarded a sum of Rs.38,650/-.

2. The facts in brief would run thus:-

The first respondent herein filed the claim petition stating that on 29.02.2000 at about 6.30 p.m., when he was proceeding in his Yamaga Motorcycle bearing registration No.TN-49-A-1458 at Manachanallur Edamalai road, a motorcycle bearing Registration TN-45-X-7056, which was driven by its driver in a rash and negligent manner hit against him. In the accident, he sustained injury and the vehicle was also heavily damaged. Immediately, he was taken to Chidambaranathan Nursing Home and after giving first aid he was admitted in Trichy Government Hospital.

3.The owner of the offending vehicle remained ex-party and it was contested by the appellant herein. In their counter, they have disputed the manner of the accident and the involvement of



driven by a person, who was not having valid and effective driving licence at the time of accident.

4. The Tribunal after analysing the evidence adduced by the parties, awarded a sum of Rs.38,650/- making the appellant Insurance Company liable to pay the amount.

5. Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant would argue that the Tribunal has failed to appreciate the defence of the appellant, the evidence of R.Ws.1 & 2 and exhibits R1 to R3 in proper perspective. According to the learned counsel, the evidence produced by the appellant would show that the rider of the vehicle was having licence to drive the light motor vehicle, but no valid and effective license was issued to drive the two-wheeler. The learned counsel for the appellant drew the attention of this Court to Section 3 and 10(2) of the Motor Vehicles Act to show that after the amendment to the Motor Vehicles Act in the year 1994, separate licence has to be obtained by the person, who is driving motorcycle with gear and without gear, LMV and transport vehicle.

6. Heard the learned counsel appearing for the respondents in this regard.

7. The Tribunal while deciding the liability of the Insurance Company, held that a person, who was issued with licence to drive the LMV can drive a two-wheeler following the decision reported in 2005 ACJ 1509.

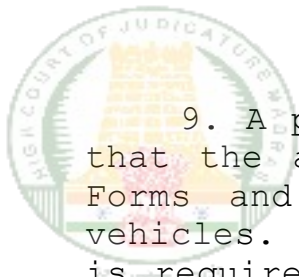
8. In this regard, it is useful to refer the Section 10 of the Motor Vehicles Act, which reads thus:-

"10. Form and contents of Licence to drive.-

(1) Every Learner's Licence and Driving Licence, except a Driving Licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A Leaner's Licence or, as the case may be, Driving Licence shall also be expressed as entitling the holder to drive a Motor Vehicle of one more of the following classes, namely, -

- (a) Motorcycle without Gear;
- (b) Motorcycle with Gear;
- (c) invalid carriage;
- (d) Light Motor Vehicle;
- (e) Transport Vehicle;
- (i) Road-Roller
- (j) Motor Vehicle of a specified description."



9. A plain reading of the above provision would make it clear that the above Section was amended in the year 1994 prescribing Forms and contents of license to drive different category of vehicles. Therefore, a person, who wants to drive a two wheeler, is required to take a separate licence of driving a two wheeler. However, the Tribunal overlooking the amendment brought into the Motor Vehicles Act, held that the person who is having light motor vehicle, is entitled to drive a two wheeler.

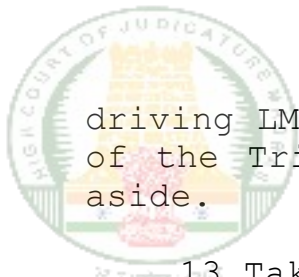
10. An identical issue came up for consideration before the Hon'ble Apex Court in **Oriental Insurance Co. Ltd. vs. Zaharulnisha and others (AIR 2008 SC 2218)**, wherein, it has been observed and held that the Insurance Company cannot be made liable to pay amount of compensation if the vehicle was driven by the person, who had no valid and effective licence to drive the vehicle on the date of accident. The relevant paragraph is extracted hereunder:-

"18. In the light of the above-settled proposition of law, the appellant insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who is admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10 (2) of the MV Act."

11. In the latest decision of this Court reported in **2019(1) TN MAC 373 (Chandru vs. Multi Speciality Lab Services Pvt. Ltd.)** it has been held as under:-

14. A person must possess a Driving Licence in respect of the class of vehicle which he wants to drive. From a bare reading of Section 10 of the Act, it is clear that licence for a Motorcycle is for a separate class of vehicle than for an LMV. A person possessing a licence for LMV or even for a Transport Vehicle may not be competent to drive a Two-wheeler. On the strength of a License to drive a Two-wheeler. Therefore, the Tribunal was right in holding that at the time of accident, the Appellant was not in possession of valid Driving Licence to drove a Two-wheeler."

12. In the present case, indisputably, the driver of the offending vehicle did not possess a licence to drive motorcycle at that relevant time, however, he was issued with a licence of



driving LMV. In view of the decisions referred supra, the finding of the Tribunal could not be affirmed. Hence, it is hereby set aside.

13. Taking note of the fact that admittedly the deceased was a third party and the Insurance Company has proved that the vehicle was driven by a person who was not having valid driving license, this Court directs the Insurance Company to satisfy the award amount to the claimants and thereafter, recover the same from the owner of the vehicle. Since the appellant has not disputed the quantum, it is confirmed.

14. In that view, the Civil Miscellaneous Appeal is allowed. The appellant Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the owner of the vehicle. On such deposit, the claimant is permitted to withdraw the entire award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T & P)

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/ /2021

Sub Assistant Registrar(CS)

Am

To

1. The Motor Accident Claims Tribunal,  
Additional District Judge, Fast Track Court, No.2,  
Tiruchirappali.

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate ( SR-10390[F] dated 11/03/2021 )

**JUDGMENT MADE IN**  
**C.M.A(MD) No.1398 of 2011**  
**10.03.2021**

TP(CO)

TR(18.05.2021) 4P 5C