



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.697 of 2011

and

M.P. (MD)No.1 of 2011

The Branch Manager,
National Insurance Company Limited,
No.63, Rasi Plaza,
West Pradhakshina Road,
Karur - 639 002.

...Appellant/2nd Respondent

Vs.

1.A.Periyasamy

...1st respondent/petitioner

2.R.Chandirasekaran

...2nd respondent/1st respondent

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of Motor Vehicle Act, 1988, to set aside or modify the order of the Tribunal in M.C.O.P.No.177 of 2008, dated 10.11.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Karur and allow the appeal.

For Appellant : Mr.J.S.Murali
For R-1 : Mr.R.Mathialagan

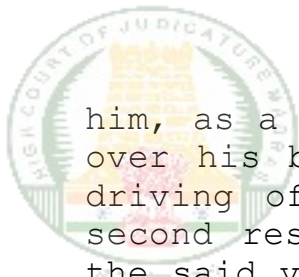
JUDGMENT

The appellant / National Insurance Company, the second respondent in M.C.O.P.No.177 of 2008 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Karur has filed the present appeal. The first respondent/claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,10,000/- for the injuries sustained by him in a road accident on 14.02.2008.

2. The case of the claimant in nutshell is as follows:

On 14.02.2008, the claimant was riding his two wheeler T.V.S. Super XL bearing registration No.TN-47-Q-5046 proceeds towards North to South in the Karur- Vangal road, keeping to his extreme left side of the road near Arasu Colony and about 11.45 am, a

<https://hcservices.com/govt/madras/cases/>



him, as a result of which, he fell down and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Maruthi Omni Van belonging to the second respondent was the cause for the accident and that since the said vehicle was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3.The owner of the Maruthi Omni Van remained absent before the Tribunal and therefore he was set as *exparte*. The National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Chief Judicial Magistrate/ Motor Accident Claims Tribunal, Karur while awarding compensation of Rs.72,900/- together with interest at the rate of 7.5% per annum to the claimant, held that the Insurance Company is liable to pay the compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Mr.J.S.Murali, learned counsel appearing for the appellant contended that though sufficient evidence was adduced by the respondents to show that the rider of the motorcycle was not having a valid driving licence on the date of the accident, the Tribunal fastened the liability on the Insurance Company. Therefore, he would pray this Court that 'pay and recovery' may be ordered by this Court.

5.Heard Mr.R.Mathialagan, learned counsel appearing for the first respondent / claimant and also he has agreed for pay and recovery.

6.In the judgment reported in (2004)13 SCC 224 in the case of Oriental Insurance Co. Ltd., Vs. Nanjappan and others, the Hon'ble Apex Court made the following observations:-

"8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided



against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

7. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Insurance Company to pay the award amount is liable to be set aside. Therefore, the National Insurance Company Limited, is directed to pay the award amount to the first respondent/ claimant in the first instance and then recover the same from the owner of the Maruthi Omni Van.

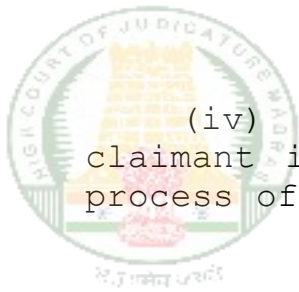
8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The present appellant / National Insurance Company Limited, is directed to deposit the compensation awarded by the Tribunal i.e., Rs.72,900/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.177 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the Maruthi Omni Van bearing Registration No.TN-01-A-2827 on the same cause of action.



(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Karur.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S. MURALI, Advocate (SR-35750[F] dated 24/11/2021)

**C.M.A. (MD)No.697 of 2011
and**

**M.P. (MD)No.1 of 2011
23.11.2021**

AM(CO)

SB(06.01.2022) 4P 5C