



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

**DATE ON WHICH RESERVED : 16.12.2020**

**DATE ON WHICH PRONOUNCED : 11.01.2021**

**CORAM:**

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

**C.M.A. (MD) .No.662 of 2010**

**and**

**MP (MD) Nos.1, 2 & 3 of 2010**

Cholamandalam General Insurance  
Company Ltd.,  
2<sup>nd</sup> Floor, Alankar Building,  
No.551, D.B.Road,  
R.S.Puram, Coimbatore-641 002.

: Appellant /Respondent No.2

Vs.

1.Azhagarsamy

: 1<sup>st</sup> Respondent/Petitioner

2.N.Vellathai

: 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2009, made in M.C.O.P.No.40 of 2007, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Thoothukudi.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.G.Aravinthan  
for Mrs.P.Jessi Jeeva Priya

For R2 : No Appearance

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 16.11.2009, made in M.C.O.P.No.40 of 2007, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Thoothukudi.

2.On 12.12.2005, at about 11.00 a.m, the petitioner was riding his two wheeler bearing Registration No.TN-69-6698 towards Kayathar in Kadambur to Kayathar main road. At that time, the load Auto bearing Registration No.TN-69-V-0794 was driven by its driver in a rash and negligent manner and dashed against the petitioner/claimant. As a result of which, he sustained injury and



he was taken to Sutharson Hospital, Tirunelveli for first aid. Later, was shifted to Apollo Hospital, Madurai. Because of the accidental injuries, he lost sensation in the whole body below the neck. Subsequently, a case in Crime No.467 of 2005 was registered against the load Auto driver. The grievance of the petitioner/claimant is that, at the time of the accident, he was earning a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) per month. Therefore, he filed a claim petition for claiming a compensation Rs.60,00,000/- (Rupees Sixty Lakhs only) before the Tribunal.

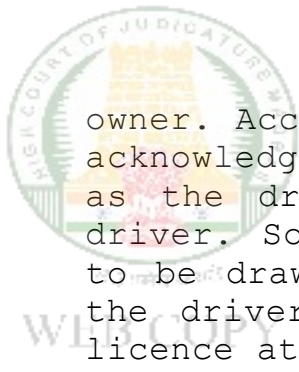
3.The case of the appellant before the Tribunal is that, at the time of the accident, the driver did not have any valid driving licence. Therefore, the driver and another were responsible for the accident.

4.During enquiry, before the Tribunal, on the side of the petitioner, three witnesses were examined and twenty seven documents marked. On the side of the respondents, two witnesses were examined and nine documents marked.

5.After considering the oral and documentary evidence, the Tribunal came to the conclusion that the first respondent's vehicle driver was responsible for the accident. Regarding the quantum, it has awarded a sum of Rs.11,11,400/- with 7.5% interest. Against the same, this appeal has been preferred by the Insurance Company.

6.The only point there arose, at the time of argument is that it is either case of no driving license or invalid driving license, since the offending vehicle is a goods vehicle. If there is evidence on record to show that the unladen weight is less than 7500 kg and if the person is holding light motor vehicle driving licence, he can drive the commercial vehicle also. This position has been settled in a judgment reported in **Mukund Dewangan Vs Oriental Insurance Company 2017 14 SCC 663**. Therefore, according to the appellant, if the Court comes to the conclusion that as mentioned above, he has no points against the quantum and the liability, even though, so many grounds have been raised in the grounds of appeal.

7.To show the unladen weight of the offending vehicle, no documents were available. It is admitted by the appellant that the same was mentioned only in the Registration Certificate. But, that was not produced either by the claimant or by the Insurance Company, by summoning the Regional Transport Office officials. No steps were taken by the Insurance Company. But, it wants to draw an adverse inference against the owner of the vehicle, since every attempt was made by him to prove the same by sending notice to the



owner. According to him, Ex.R.3 and Ex.R.4 are the notices and the acknowledgement of legal notice received by the owner and as well as the driver. It was received by the owner, but, not by the driver. So, according to the appellant, an adverse inference has to be drawn against the owner and the driver to the effect that the driver was not owning proper driving licence or no driving licence at all. It is not possible for the claimant to go into all those things. It is the matter between the insurer and the insured. The third party will come in no way. If there is a policy violation on the part of the insured, then the Insurer has to take up the liability to pay the amount and recover the same from the insured and this is the position. The claimant at the time of argument has also accepted that if any such order is passed, they will have no grievance. Before the Tribunal also, no documents were available to show that driving licence was owned by the driver. So as contended by the appellant, adverse inference has to be drawn against the second respondent herein, who is the owner, to conclude that the offending vehicle's driver was not owning proper driving licence.

8. Therefore, the Insurance Company has to pay the compensation and recover the same from the owner. There is no dispute with regard to the quantum fixed by the Tribunal, which was fixed at Rs.11,11,400/-. It is maintained and the award is modified to the effect that the Insurance Company shall deposit the claim amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit on behalf of the second respondent within two months from the date of receipt of copy of this order and on such deposit being made, the claimant may withdraw the same by filing proper petition and the appellant is at liberty to recover the same from the owner, who is the first respondent before the Tribunal and the second respondent in this appeal.

9. With the above modification, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



dss

**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 Chief Judicial Magistrate,  
Motor Accident Claims Tribunal  
Thoothukudi.

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

+1 CC to M/s.P.JESSI JEVA PRIYA, Advocate ( SR-1028[F] dated 19/01/2021 )

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate ( SR-881[F] dated 18/01/2021 )

**Judgment made in**  
**C.M.A. (MD) .No.662 of 2010**  
**and**  
**MP (MD) Nos.1, 2 & 3 of 2010**  
**11.01.2021**

KM (05.02.2021) 4P 6C