



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.03.2021

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

C.M.A. (MD)No.519 of 2013

and

MP (MD)No.1 of 2013

WEB COPY

The Branch Manager,
National Insurance Company Limited,
Keela Raja Veedhi,
Pudukkottai.

: Appellant/2nd Respondent

-Vs-

1.Kanakambal

2.Chinnathambi @ Ayyakannu

3.Minor Anusuya : Respondents 1 to 3 /Petitioners

(Minor 3rd respondent is represented through
her Mother and Guardian, 1st respondent)

4.Pothumponnu

: 4th Respondent /1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award, dated 14.10.2009 passed M.A.C.O.P No.199 of 2006 by the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai.

For Appellant : Mr.S.Srinivasa Raghavan

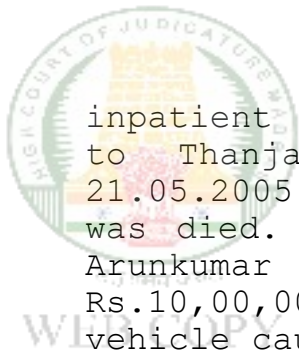
For R1 to R3 : No appearance

For 4th Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai, dated 14.10.2009 in MACOP.No.199 of 2006.

2.The short facts of the case is that the deceased minor Arunkumar was studying 1st Standard by staying in his grandfather's house and that on 19.02.2005, when the deceased Arunkumar was suffering from illness, his Uncle namely Durai Raj, taken him to the Alangudi Government Hospital in his friend's TVS-50 XL TN-55-J-7718, in which one Mala and deceased minor Arunkumar were travelling as pillion riders. While he was proceeding to Hospital, one child crossed near Ambedkar Nagar and due to it, he applied sudden break. In that process, the said Mala and minor Arunkumar fell down from the vehicle, resulting which, the minor Arunkumar sustained head injury on his back side and caused blood clot on his head and lost consciousness and immediately, he was taken to Alangudi Government Hospital and thereafter, he was referred to Pudukottai Government Hospital, for further treatment, wherein, he was taking treatment as



inpatient from 19.02.2005 to 21.05.2005. Thereafter, he was shifted to Thanjavur Government Hospital and taking treatment from 21.05.2005 to 25.02.2005. Though, effective treatment was given, he was died. The parents and the minor sister of the deceased minor Arunkumar filed a claim petition seeking compensation of Rs.10,00,000/- on the ground that the driver of the offending vehicle caused the accident.

3.The claim petition was resisted by the appellant Insurance Company contending that due to negligence of the rider of the motor cycle, the accident had taken place and the rider of the motor cycle was not having valid driving licence. So, the Insurance Company is not liable to pay any compensation.

4.The Tribunal, upon consideration of the oral and documentary evidence found that the rider of the two wheeler who did not have valid driving licence was responsible for the accident and awarded compensation of Rs.1,50,000/- together with interest @ 7.5% p.a. Challenging the said award, the appellant Insurance Company is before this court with this civil miscellaneous appeal.

5.Though the appellant has assailed the award of the Tribunal on various grounds, Mr.S.Srinivasa Raghavan, learned counsel appearing for the Insurance Company would mainly contend that the Tribunal having found that the rider of the motor cycle was not having valid driving license at the time of the accident, erred in directing the appellant to pay the compensation amount to the claimants.

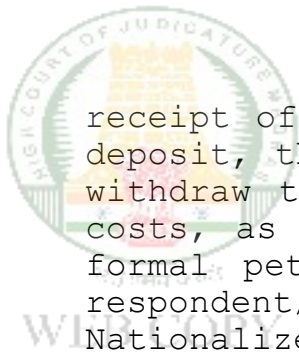
6.Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant and perused the materials available on record.

7.In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has established before the Tribunal that the rider of the two wheeler was not having valid driving licence.

8.It is settled law that even though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recovery the same from the owner the vehicle.

9.In the case on hand, the Tribunal after considering the facts and circumstances of the case, directed the appellant Insurance company to pay the award amount, but however failed to order pay and recover the same from the owner of the vehicle.

10.In view of that, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the entire award amount of Rs.1,50,000/- together with interest @ 7.5% <https://hcservices.ecourt.gov.in/hcservices/> within a period of eight weeks from the date of



receipt of a copy of this order, if not already deposited. On such deposit, the respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their respective share together with accrued interest and costs, as per the apportionment of the tribunal without filing any formal petition before the Tribunal. The share of the minor 3rd respondent/3rd claimant shall be deposited in any one of the Nationalized Bank on a fixed deposit scheme, till she attained majority. The 1st claimant, being the mother and guardian of the minor is entitled to withdraw the interest accrued on the fixed deposit once in three months for the welfare of the minor. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case [(2004)13 SCC 224]**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

sjj

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

2.The Section Officer,
The Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-11414[F]
dated 16/03/2021)

+1 CC to M/s.R.P.RAMACHANTHRAN, Advocate (SR-11445[F]
dated 16/03/2021)

C.M.A. (MD) No.519 of 2013

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