



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1161 of 2011

- 1.Mariamammal
2.Maheshwari (died)
3.R.Ganesan
4.G.Arjun Pandi
5.G.Muniselvam
6.G.Sankar Ganesh

... Appellants/Claimants

(Appellants 3 to 6 are brought on record as LR's of deceased second appellant vide Court order dated 22,.06.2017 made in M.P(MD) Nos.1 to 3 of 2015)

vs.

- 1.Subbaiah

2.The Manager,
Oriental Insurance Company Ltd.,
Palkot Town,
Opposite of Railway Station,
Kerala State.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 praying this Court to set aside the judgment and award dated 26.04.2010 passed in M.A.C.O.P.No.5 of 2008 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Srivilliputhur, Viruthunagar District, as illegal and consequently directing the second respondent to pay the compensation and enhance the quantum of compensation.

For Appellants	:	Mr.A.Marthandavarman
For R1	:	Mr.J.Suresh
For R2	:	Mr.C.Jawahar Ravindran

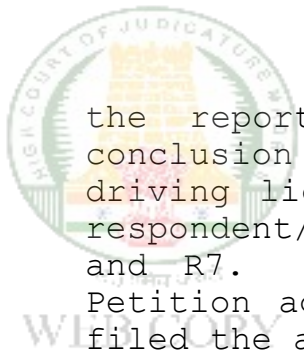
JUDGMENT

The claimants, who are the appellants herein filed MCOP No.5 of 2003 claiming compensation for the death of one Sundrarajan, husband of the first appellant.

2.During the trial, the Insurance Company filed a counter statement denying the liability on the ground that the driver of the offending vehicle insured with them, does not possess the driving licence and hence, it is a violation of the policy conditions and they are not liable to pay the compensation. The owner of the vehicle is arrayed as first respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The tribunal, on consideration of the oral and documentary evidence of R.W.1 and R.W.2 coupled with Ex.R2 to Ex.R7 including



the report of the Motor Vehicle Inspector, has come to the conclusion that the driver of the offending vehicle does not possess driving licence on the date of the accident. In fact, the first respondent/owner has also paid penalty as could be seen from Ex.R6 and R7. The tribunal has dismissed the Motor Accident Claims Petition against the insurance company. Hence, the appellants have filed the above civil miscellaneous Appeal.

4.After hearing the learned counsel for the claimants, the learned counsel for the owner of the vehicle and learned counsel for the Insurance Company and also taking note of the judgment of the Hon'ble Supreme Court in the case of ***Shamanna and another vs. Divisional Manager, Oriental Insurance Company Limited and Others*** reported in ***(2018) 9 SCC 650***, wherein it is held that when the driver of the offending vehicle does not possess driving licence on the date of the accident, the insurance company is not liable, however on the judicial pronouncement, the insurance company is directed to pay and recover the amount from the owner, this Court holds that the order of the dismissal against the second respondent/insurance company is set aside and modified into pay and recover. On the quantum of compensation, I find that the same is just and reasonable. Hence, quantum and interest awarded by the tribunal is kept intact.

5.In the result, this Civil Miscellaneous Appeal is allowed in part. The award passed in MCOP No.5 of 2008 is set aside to the limited extent of liability of the second respondent/insurance company as to that of pay and recover. The second respondent - Insurance Company is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.3,10,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.5 of 2008, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Viruthunagar District at Srivilliputhur within a period of eight weeks from the date of receipt of a copy of this order and then recover the same from the first respondent/ owner of the vehicle in the manner known to law. On such deposit being made by the second respondent/Insurance Company, the appellants are permitted to withdraw the same, as apportioned by the Tribunal, after following the due process of law. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



To

1.The Motor Accident Claims Tribunal cum
Chief Judicial Magistrate Court,
Viruthunagar District at Srivilliputhur.

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

+1 CC to M/s.P.SUBBARAJ, Advocate (SR-10552[F] dated 08/03/2022)

C.M.A(MD)No.1161 of 2011
07.03.2022

RK(28/03/2022) 3P 5C