



C.M.A.(MD)No.1345 of 2009

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DATED : 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

C.M.A.(MD)No.1345 of 2009 and
MP(MD).No.1 of 2009

National Insurance Company Ltd.,
rep. by its Branch Manager,
Tirunelveli.

... Appellant/ 2nd Respondent

Vs.

1.Minor Vanniraj
(Minor rep. through his father
and Natural Guardian Balamurugan)

2.S. Marichamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Award made in MCOP.No.929 of 2005, dated 20.04.2009, on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.II, Tirunelveli.

For Appellant : Mr. D. Sivaraman

For Respondent No.1 : Mr.T. Selvakumaran



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the Judgement and Award made in MCOP.No.929 of 2005, dated 20.04.2009, on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court No.II, Tirunelveli.

2. The 1st respondent / claimant filed the said claim petition in MCOP.No.929 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Tirunelveli, claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained by him.

3. The facts of the case is that on 04.02.2005, at about 17.45 hours when the 1st respondent was coming on the left side of the Main road, Pithapuram, in front of Thiruvalluvallur Society, the lorry bearing Regn.No.TN 65 1023 belonging to the 2nd respondent, insured with the appellant / Insurance Company was driven by its driver in a rash and negligent manner and dashed against the first respondent / claimant, as a



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result of which, the first respondent / claimant has sustained grievous injuries all over the body. Hence, he made the claim petition.

4. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a total sum of Rs.75,000/- as compensation.

5. Aggrieved by the said Award, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant submitted that the appellant has discharged its initial burden of proving its defence that the driver did not have valid driving licence during the time of accident to the owner and the driver and therefore, the burden of proof is shifted to the owner of the vehicle to prove that the driver of the vehicle has valid driving licence, during the time of accident. In order to substantiate his contention, he has also relied on the Judgment of this Court reported in **2004(1) TN MAC (DB) 455** in the case of (**National Insurance Company Limited, Bhavani Vs. Samiyathal and others**). The relevant portion of the said order reads as follows:



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“6. Accordingly, as observed by the Supreme Court in 2001 ACJ 843 (cited supra), we hold that the insurance company is liable to pay compensation to the claimants – respondents 1 to 4 herein and on account of violation / breach of terms of insurance policy, namely, the lorry being driven without a valid licence, the appellant / Insurance Company is entitled to recover from the insured.”

He would further submit that tribunal has passed an order erroneously stating that the appellant / Insurance Company is liable to pay compensation, whereas the driver of the lorry has no valid driving license at the time of accident and therefore, he prayed for pay and recovery has to be ordered.

7. The learned counsel appearing for the first respondent / claimant would submit that the Tribunal has rightly passed the award directing the Insurance Company to pay the compensation, hence, there is no need to interfere with the findings of the Tribunal. Accordingly, he prays for dismissal of the appeal.

8. I have heard the learned counsel appearing for parties and perused all the materials available on record.



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9. On a perusal of the records, it is seen that at the time of accident the driver of the lorry is not having any valid driving licence. Applying the principle laid down in the case reported in **2004(1) TNMAC (DB) 455 (National Insurance Company Ltd., Bhavani Vs. Samiyathal and others)**, this Court is of the view that the Insurance Company is only liable to pay compensation at the first instance and recover the same from the owner of the vehicle. Accordingly, the finding of the Tribunal with regard to the liability of the Insurance Company to pay the compensation amount is set aside and the award passed by the Tribunal is conferred in all other aspects.

10. In the result, the Civil Miscellaneous Appeal is allowed in part and the Insurance Company is directed to pay the compensation amount and recover the same from the owner of the vehicle. The appellant / Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.929 of 2005, on the file of the Motor Accident Claims Tribunal / Additional District, Fast Track Court No.II, Tirunelveli, along with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs,



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within a period of eight weeks from the date of receipt of a copy of this Judgment. Since the first respondent / claimant is minor, the award amount shall be deposited in any one of the Nationalized Banks till he attains majority. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No
Internet :Yes/No
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1. The Motor Accident Claims Tribunal / Chief Judicial Magistrate,
Dindigul.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A. NAKKIRAN, J.,

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