



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.315 of 2019
and
C.M.P(MD)No.3995 of 2019

National Insurance Company Ltd.,
rep. by Branch Manager,
Anguvilas Building,
Near Nagaraja Temple,
Nagercoil Village and Post,
Agastheeswaram Taluk,
Kanyakumari District.

.. Appellant /
4th Respondent

Vs

1.Narayanan

.. 1st Respondent /
Petitioner

2.Tamilselvan

3.Manikandan

4.Jebarsan Ravi

[Appeal against R2 to R4 is
dismissed for default, vide
order, dated 04.11.2019]

.. Respondents 2 to 4 /
Respondents 1 to 3

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 09.02.2018, passed in M.C.O.P.No.89 of 2016 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Nagercoil.

For Appellant : Mr.A.Ilango

For Respondent : Mr.R.Mohanasundaram
No.1 for Mr.C.K.M.Appaji

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 09.02.2018 made in M.C.O.P.No.89 of 2016, on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate's Court, Nagercoil.



2.The Insurance Company is the appellant herein, challenging the award of the Tribunal made in M.C.O.P.No.89 of 2016.

3.The appellant / Insurance Company with which the offending vehicle having Registration No.TN-45-T-4842 is insured. On the date of accident, the claimant, who is the rider of the two wheeler having Registration No.TN-74-0185, was moving from Arun Tution Centre, Vettornimadam to his home in Kattaiyanvilai. At that time, the insured vehicle came in the opposite direction and hit against the claim petitioner, who sustained injury, resulted in filing of M.C.O.P.No.89 of 2016.

4.In respect of another claim petition, it appears that the Insurance Company has settled the matter in the Lok Adalat as it could be seen from Ex.B.8. Charge sheet is filed against the driver of the offending vehicle as it could be seen from Ex.A.7.

5.On the point of rash and negligent on the part of the rider of the two wheeler having Registration No.TN-75-T-4842, which is insured with the appellant / Insurance Company, in the absence of any challenge in the appeal, the finding rendered by the Tribunal is hereby confirmed.

6.On the point of quantum of compensation, both the parties were heard.

7.After going through the medical evidence of P.W.3, Dr.Raju alongwith discharge summary, i.e., Ex.P.9, Ex.P.10 and Ex.P.11, I find that the compensation awarded towards different heads, are found to be reasonable.

8.A specific plea was raised that the rider of the offending vehicle does not have valid driving license at the time of accident. Neither the claim petitioner nor the owner has produced the license of the rider of the offending vehicle and hence, the Tribunal has not considered this aspect. Since the rider of the offending vehicle does not have valid driving license at the time of accident, the Insurance Company cannot be mulcted with the liability. However, based on various judicial pronouncements, the Insurance Company can be directed to pay the award amount to the claimant at the first instance and then to recover the same from the owner of the vehicle by following the due process of law. Accordingly, the compensation awarded in M.C.O.P.No.89 of 2016 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Nagercoil, is confirmed, however modified only to the extent of ''pay and recovery''.



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9.This Civil Miscellaneous Appeal is allowed in part only to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(02.05.2022) 3P 4C