BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)Nos.812 and 813 of 2019
and
C.M.P.(MD).No.10553 of 2019

Divisional Manager,
M/s.National Insurance Company Limited,
No.3, North Veli Street,
Madurai District.
... Appellant in both C.M.As/
Respondent No.2

vs.

1.K.Rajendran ...Respondent/Petitioner

2.S.Jamal Maideen ...Respondents in C.M.A(MD).No.812 of 2021/
Respondent No.1

1.R.Vimaladevi ...Respondent/Petitioner

2.S.Jamal Maideen ...Respondent in C.M.A(MD).No.813 of 2019/
RespondentNo.1

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act 1988, to set a side the judgment and decree passed by the Motor Accident Claims Tribunal Cum Special Subordinate Judge, (MCOP Cases), Madurai made in M.C.O.P.Nos.941 and 942 of 2015 dated 04.12.2018.

For Appellant (In both Cases) : Mr.R.Rajamani
For R1 (In both Cases) : Mr.R.Gowri Sankar
For R2 (In both Cases) : Mr.A.Syed Abdul Kadhar

COMMON JUDGMENT
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These Civil Miscellaneous Appeals are filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.Nos.941 and 942 of 2015 on the file of the Motor

Accident Claims Tribunal Cum Special Subordinate Judge (MCOP Cases) Madurai.

2. The respective first respondent in both C.MAs are the claimants in both M.C.O.Ps and they were travelled as a rider and the pillion rider in the two wheeler.

3. After contesting the trial, the Tribunal came to the conclusion that the owner of the vehicle and the Insurance Company jointly or severally liable to pay the compensation to the injured/claimant. Aggrieved over the awarded passed by the Tribunal, the National Insurance Company has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides and perused the materials available on record.

5. The learned counsel for the Insurance Company submitted that at the time of the accident, the rider of the two wheeler does not possess valid permit to drive the vehicle in the public place, the said fact has been elicited in the examination of the petitioner witnesses. Exs.R5 and R6/legal notice issued by the Insurance Company calling upon the owner of the taxi to produce the permit policy and he has not turned up to produce the policy and hence, adverse inference has been drawn as Ex.R3.

6. On perusal of records, it shows that at the time of the accident, the insured vehicle does not possess valid permit to drive the vehicle and hence, it is the violation of the policy condition. However, in the decision in the case of **Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018**, the Hon'ble Division Bench of the Supreme Court has held that even though the driver of the offending vehicle did not possess valid permit on the date of the accident, the Insurance Company may be directed to 'pay' the compensation amount to the claimant and then, 'recover' the same from the owner of the offending vehicle. As per the said decision, the pay and recovery is in order in this case. Therefore, the Insurance Company has to 'pay' the compensation to the first respondent/claimant in both C.M.As and then 'recover' the same from the owner of the Car bearing Registration No. TN 59 V 2209,

7.<u>Quantum of compensation</u>: After going through the award passed by the Tribunal and also the heads under which the compensation is awarded, it appears that the same is just and reasonable and it does not suffer from any illegality or irregularity. Accordingly, the quantum of the compensation awarded by the Tribunal is hereby confirmed.

8. In the result,

(i) These Civil Miscellaneous Appeals are partly allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal, with regard to, the liability alone is modified and 'pay and recovery' is ordered.

(iv) the Insurance Company to 'pay' the compensation to the first respondent/claimant in both C.M.As and then 'recover' the same from the owner of the Car bearing Registration No. TN 59 V 2209.

(v) The appellant - Insurance Company is directed to deposited the compensation awarded by the Tribunal, i.e., Rs.2,97,000/- and Rs.40,000/-respectively/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.Nos.941 and 942 of 2015, on the file of the Motor Accidents Claims Tribunal Cum Special Subordinate Judge, (MCOP Cases), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1. The Motor Accident Claims Tribunal Cum Special Subordinate Judge, (MCOP Cases), Madurai

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

C.M.A(MD)Nos.812 and 813 of 2019
26.04.2022

RD(01/06/2022) 3P 4C