



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.296 of 2014

and

M.P.(MD)No.1 of 2014

WEB COPY

The Branch Manager,
National Insurance Company Limited,
1st Floor, 6, West Masi Street,
Madurai,
Tamilandu.

...Appellant/2nd Respondent

Vs.

1.M.Vellaithai

2.Rajalakshmi

3.Muthuraman

4.Mutukumar

...Respondent Nos.1 to 4/

Petitioner Nos.1 to 4

5.Seenivasan

...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District & Sessions Court, Dindigul in M.C.O.P.No.5 of 2011, dated 03.07.2012.

For Appellant	: Mr.A.Balaji
	for Mr.D.Sivaraman
For R1 - R4	: Mr.N.Madhava Govindan
For R5	: No Appearance

JUDGMENT

The appellant/National Insurance Company Ltd., the second respondent in M.C.O.P.No.5 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Dindigul has filed the present appeal.

2. The case of the claimant in nutshell is as follows:

On 14.11.2010, while the deceased one Malaisamy and his Muthuraman were walking on Sithaiyankottai - Ayyampalayam Road from east to west at left side of the road, when they were came near Siragitheen Thoppu, at that time a Mini Tractor bearing Registration No.TN-57-AB-4808 belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the deceased Malaisamy. Immediately, he was admitted in the Government Hospital, Dindigul, but he succumbed due to injuries. A case in Crime No.414 of 2010 under Section 279, 304(A) IPC was registered against the driver of the Mini Tractor.



3.The claimants have filed a petition in M.C.O.P.No.5 of 2011 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court, Dindigul, seeking compensation of Rs.5,00,000/-.

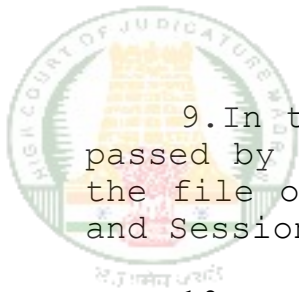
4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and marked four documents as Ex.P1 to Ex.P4. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and marked seven documents as Ex.R1 to Ex.R7.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsels for the claimants and respondents and also on appreciating the evidences on record, held that the accident was occurred only due to the rash and negligent driving of the driver of the first respondent and directed the first and second respondents to pay a sum of Rs.4,80,500/-, as compensation. Against which, the appellant/Insurance Company has preferred this appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that the driver of the Mini Tractor bearing Registration No.TN-57-AB-4808 was not having a valid driving licence on the date of the accident. Eventhough the appellant/Insurance Company issued notice to the owner of the vehicle, no license was produced. But the Tribunal fastened the liability both on the Insurance Company and fifth respondent. He also relied on the judgment of this Court in **National Insurance Company Ltd., v. Samiyathal and others** reported in **2004 (1) TNMAC 455**, in which, this Court held that even after issuing notice to the owner to produce the driving licence, the owner has not produced any licence and hence, the owner is liable to pay compensation. Therefore, he prayed this Court that 'pay and recovery' may be ordered by this Court.

7.Heard Mr.A.Balaji, learned counsel for the appellant and Mr.N.Madhava Govindan, learned counsel for R1 to R4. No representation on behalf of the fifth respondent.

8.A perusal of records would show that before the Tribunal, the appellant/ Insurance Company has issued notice to the owner of the vehicle, which were marked as Ex.R3 to Ex.R5 to produce the license. But the owner of the vehicle has not produced any license for the driver of the Mini Tractor. The owner of the vehicle was also set ex-parte and not appear before the Court to prove the driver has valid license. So the appellant/Insurance Company clearly proved that there was no license for the driver of the Mini Tractor on the date of accident. Hence, the Tribunal ought to have ordered pay and recovery.



9.In the facts and circumstances of the present case, the order passed by the Tribunal in M.C.O.P.No.5 of 2011, dated 03.07.2012 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court, Dindigul, is hereby modified.

10.In the above facts and circumstances of the case, this Court directs the appellant/National Insurance Company Limited, to deposit the compensation amount awarded by the Tribunal i.e., Rs.4,80,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.5 of 2011 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court, Dindigul in the first instance and then, recover the same from the owner of the mini Tractor bearing Registration No.TN-57-AB-4808 on the same cause of action. On such deposit being made, the claimants are entitled to withdraw the same after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

11.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal/
Additional District & Sessions Court, Dindigul

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-2657[F] dated 27/01/2022)

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_RD(29.03.2022) 3P 5C