



C.M.A.(MD)No.1874 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.02.2023

Delivered On : 28.02.2023

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.1874 of 2013

The National Insurance Company Limited,  
Rep. through its Branch Manager,  
North Veli Street,  
Madurai – 625 001.

... Appellant / 2<sup>nd</sup> respondent

Vs.

1.P.Balasubramanian  
2.Subburaj

... Respondent No. 1 /Petitioner  
... 2<sup>nd</sup> Respondent / 1<sup>st</sup> Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award, made in M.C.O.P.No.220 of 2005, dated 12.09.2012, on the file of the Motor Accidents Claims Tribunal – VI Additional District Court, Madurai.

For Appellant

: Mr. D.Sivaraman

For Respondents

: Mr.R.Pon Karthikeyan for R1

: No appearance for R2



C.M.A.(MD)No.1874 of 2013

WEB COPY

## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.220 of 2005, dated 12.09.2012, on the file of the Motor Accidents Claims Tribunal – VI Additional District Court, Madurai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.220 of 2005, is as follows:-

On 06.05.2004, at about 3.00 am., when the petitioner was working as a Cleaner in a lorry bearing Registration No.TN-59-U-4702, when he was tightening the Tarpalin with the rope on the top of the lorry, the driver of the vehicle drove the vehicle in a rash and negligent manner. The petitioner was thrown away from the lorry and he sustained grievous injuries. He was taken to Dr.Padmanaban Hospital for first aid and he was admitted in K.K.Nagar Rasi Hospital and then he was admitted in Government Rajaji Hospital, Madurai. The petitioner claim a sum of Rs. 2,00,000/- as compensation.



C.M.A.(MD)No.1874 of 2013

3. A Brief substance of the counter filed by the first respondent, in M.C.O.P.No.220 of 2005, is as follows:

The petitioner was not on duty on the date of accident. He fell down on his own negligence not on the negligence of the driver. Even after the accident, the petitioner himself has stated that he had only simple injuries. The vehicle was insured with the second respondent and the policy was in force. The first respondent is not liable to pay compensation.

4. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.220 of 2005, is as follows:

The manner of the accident, age, income, profession and nature of injuries are all denied. The driver of the first respondent did not possess a valid driving licence. There was no permit for the vehicle. The accident has taken place only due to the negligence of the petitioner himself. Since the petitioner was a Cleaner under the first respondent, he has to file a petition before the Deputy Commissioner of Labour and the claim petition before this Forum is not maintainable. The claim is exorbitant.

5. 4 witnesses were examined and 13 documents were marked, on the side of the claimant. 2 witnesses were examined and 2 documents were marked, on the



C.M.A.(MD)No.1874 of 2013

side of the respondents. After considering both sides, the Tribunal awarded a sum of

Rs.60,000/- as compensation.

6. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The claimant alleged that he was an employee of the owner of the vehicle. The allegation is that the accident has happened when he was on duty and that he cannot be considered as third party, under Section 166 of the M.V. Act. Under Section 147 of M.V. Act, the insurer is not liable to indemnify any liability other than that arise under the Workmen's Compensation Act. Section 167 of M.V. Act is maintainable only when the petition is maintainable under the M.V. Act as well as under the W.C. Act. Option was given to the claimant, to choose any Forum, either under the M.V. Act or under the W.C. Act. The Tribunal failed to consider that the driver was not having valid driving licence and hence, the Insurance Company is not liable to pay compensation. The appellant has discharged its initial burden by sending notice to the insured by calling upon him to produce the driving licence particulars of the driver and the burden of proof lies only on the insured. The Tribunal erred in awarding a sum of Rs.10,000/- towards medical expenses, Rs. 44,000/- towards permanent disability, Rs.6,000/- towards pain and sufferings.



C.M.A.(MD)No.1874 of 2013

WEB COPY

7. On the side of the appellant, it is stated that the driver was not having a valid driving licence. The claimant is having the option either to choose the Tribunal or to choose the Labour Commissioner, under Section 167 of M.V. Act. In this case, the claimant ought to have chosen W.C. Act and not the M.V. Act and the petition is not maintainable and the owner alone is liable to pay compensation.

8. A judgment of this Court reported in **2004-1-TNMAC- (DB)-455 (National Insurance Company Limited V. Samiyathal & others)** is cited, wherein, it is stated as follows:-

*“6. .... 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.”*

9. On the side of the first respondent/claimant, it is stated that under Section 167 of M.V.Act, the claimant can approach either the Tribunal or the Labour Commissioner. The claimant is a Cleaner, the appellant failed to prove that the driver was not having valid driving licence.



C.M.A.(MD)No.1874 of 2013

10. Admittedly, the claimant is having a right to file a claim petition either before the Tribunal under the M.V.Act or before the Labour Commissioner, under the W.C.Act. Here, the claimant has chosen the Tribunal for claiming Compensation. It is seen that the accident was not disputed in the counter. Except notice to the second respondent herein, the appellant has not chosen to examine any witness from the R.T.O, to prove that the driver was not having valid driving licence. Ex.R1 and Ex.R2 are insufficient to prove that the driver was not having valid driving licence.

11. P.W.4 has deposed that the claimant sustained 22% disability. Disability certificate was marked as Ex.P12. X-Rays were marked as Ex.P11 and Ex.P13. Treatment particulars was marked as Ex.P10. O.P.note book was marked as Ex.P9. For 22% disability, the Tribunal has awarded Rs.44,000/- as compensation and the Tribunal has awarded Rs.6,000/- for pain and sufferings, transportation and extra nourishment, Rs.10,000/- and the Tribunal awarded Rs.60,000/- as compensation, which is reasonable.

12. For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. The compensation awarded by the Tribunal is hereby confirmed.



C.M.A.(MD)No.1874 of 2013

WEB COPY

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.60,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

**28.02.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes/No  
Ls



WEB COPY



C.M.A.(MD)No.1874 of 2013

**R. THARANI, J.**

Ls

To

1.The Motor Accidents Claims Tribunal –  
VI Additional District Court,  
Madurai.

2.The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

Pre-delivery Judgment made in  
C.M.A.(MD)No.1874 of 2013

**28.02.2023**