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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 20.11.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE M. DHANDAPANI**

**Civil Miscellaneous Appeal No.629 of 2020**

K.Narasimhan

... Appellant

Vs.

1. S.Jothish Kalinga  
2. M/s.Bajaj Alliance General Insurance Co. Ltd.,  
No.1989, H. Block,  
12<sup>th</sup> Main Road,  
Anna Nagar, Chennai-40.

Present Address,  
M/s.Bajaj Alliance General Insurance Co. Ltd.,  
No.276 & 277 Old No.496 & 497,  
Issna Kattima Building,  
5<sup>th</sup> Floor, P.H.Road,  
Arumbakkam, Chennai-106.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned order dated 04.01.2013 passed by the Motor Accidents Claims Tribunal (III Small Causes Judge) Chennai in MCOP. No.1745/2011.

For Appellant : M/s.R.Megha

For M/s.L.Munusamy

For Respondents : Mr.C.Harini  
for M/s.M.B.Gopalan Associates R2  
R1- No appearance



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## **JUDGMENT**

The appellant, who is the owner of the lorry involved in the accident, is the first respondent in M.C.O.P.No.1745 of 2011 on the file of the Motor Accidents Claims Tribunal, (III Small Causes Judge) Chennai. The first respondent herein has filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming a sum of Rs.6,00,000/~ as compensation for the injuries sustained in the accident that took place on 24.2.2011.

2. According to first respondent, on 24.02.2011, at about 10.00 A.M., while he was riding his two wheeler bearing Reg. No.TN 21 AZ 9829 at Kancheepuram to Chengalpet High road, at that time, the Eicher lorry bearing Reg. No.TN 22 T 5037 was driven by its driver in a rash and negligent manner on the same road and hit against the first respondent, for which, he sustained grievous injuries. Therefore, the first respondent filed the said claim petition against the appellant and the second respondent-insurance company, being the owner and insurer of the car respectively.



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3. The Tribunal, considering the pleadings, oral and documentary evidence, held that due to rash and negligent driving of the driver of the lorry, the accident had happened and directed the appellant~Insurance Company to pay a sum of Rs.3,24,165/- as compensation to the first respondent at the first instance and recover the same from the appellant herein, who is the owner of the lorry on the sole ground that the driver of the lorry has not possessed valid license at that time of the accident.

4. Against the said award dated 04.01.2013 made in M.C.O.P.No.1745 of 2011, the appellant~owner of the vehicle has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the driver of the lorry had a valid driving license with heavy duty endorsement on the date of the accident which fact was suppressed by the insurance company before the Tribunal. Hence, the appellant has filed the driving license of the driver before this Court as additional document. Hence, this Court may set aside the award in respect of pay



and recovery method alone.

6. The learned counsel further submitted that before the trial court, transfer the name of the vehicle from the appellant to the third respondent was not brought to the notice of the Court. Even then, the Tribunal has passed pay and recover method only on the ground that at that time of the accident, the driver of the car has not possessed valid driving license, which was periodically renewed. However, an award was passed as against the appellant without issuing notice to the appellant, which is clear violation law. Hence, this Court may set aside the impugned award passed by the Tribunal.

7. The learned counsel for the insurance company submitted that after considering the witnesses and documentary evidence, the Tribunal has passed award, which is perfectly in order and the same needs no interference.

8. Heard the learned counsel appearing for the appellant and the learned counsel for the Insurance Company and perused the entire



materials on record.

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9. From the materials available on record, it is seen that the accident has happened on 24.02.2011. At the time of accident, the appellant has not produced the driving license of the driver of the lorry and he has set ex-party before the Tribunal. Pay and Recovery was ordered by the Tribunal on the ground that the the appellant has permitted the driver to drive the lorry without valid license.

10. When the matter is taken up for hearing, the appellant has produced the driving license of the driver and on perusing the same, the said license was issued in the year 2016 and it will expired in the year 2016. Hence, "pay and recovery" method ordered by the Tribunal is alone set aside.

11. With the above discussion, this Civil Miscellaneous Appeal is allowed. No costs. The liability that was fastened against the appellant company is alone set-aside. Any amount that was deposited by the appellant shall be permitted to be withdrawn. The insurance company is



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directed to deposit the entire amount along with interest at the rate of 7.5% within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of such payment, the Tribunal shall deposit the same to the bank account of the claimant along with interest and costs.

No costs.

**20.11.2024**

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Judge, Motor Accidents Claims Tribunal (III Small Causes Judge)

Chennai



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**M.DHANDAPANI.,J**

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**Civil Miscellaneous Appeal No.629 of 2020**

**20.11.2024**