BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.449 of 2013

National Insurance Company Limited,
S.N.High Road,
Tirunelveli Junction,
Through its Branch Manager. ... Appellant

Vs.

1. J.Sumathi
2. J.Pavithra
3. J.Sahila
4. S.Annapuranammal
5. M.Mohammed Abdullah ... Respondents

(3rd respondent declared as Major and discharged the guradianship of 1st respondent, vide Court order, dated 30.08.2018 made in C.M.P.(MD)No. 3991 of 2018 in C.M.A.(MD)No.449 of 2013)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order and decree, dated 18.06.2009, made in M.A.C.O.P.No.1215 of 2005, on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tirunelveli.

For Appellant	: M/s.P.Malini
For R1 to R3	: Mr.S.Velrajan
R4	: Died
R5	: Exparte

JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is case of fatal. The nature of accident is that the deceased was driving a two wheeler Scooty and the offending vehicle was a TVS Motor Cycle. The contention of the Insurance Company is that the entire liability is fixed on the offending vehicle and the same is erroneous. When the accident was head on collision, the contributory negligence ought to have been fixed on the vehicle in which the deceased was travelling.

3. The said contention is acceptable, since in the case of head on collision, both the vehicles are liable. Hence, this Court is fixing the contributory negligence on the part of the deceased as 20% and on the part of the offending vehicle as 80%.

4. The next contention of the Insurance Company is that the driver of the offending vehicle was not possessing any license. Hence, pay and recovery may be ordered. However, the claimant submitted that the Regional Transport Authority (RTO) has deposed before the Tribunal that license was granted to the

driver of the vehicle on 17.05.2005 but the accident occurred on 16.01.2005. However, when the license is issued on 17.05.2005, prior to issuance of license the driver would possess Learner License Registration (LLR) which is valid for six months. In the present case, if six months is added, the LLR would be there for the driver of the offending vehicle at the time of accident. In such circumstances, pay and recovery cannot be ordered. However, the said contention was vehemently opposed by the Insurance Company stating if LLR was available, the same ought to have been produced by the RTO and when the same was not produced, it cannot be presumed.

5. After hearing the submissions on either side, this Court is of the considered opinion that whenever license is not available, then pay and recovery ought to be ordered. Therefore this Court is order pay and recovery. However, the license issue is left open. If the driver of the vehicle or the owner of the vehicle is contesting the case regarding the license, they are at liberty to raise the issue in Execution Proceedings. Therefore, this Court is ordering pay and recovery leaving the issue of license open and the issue shall be decided in the E.P. Proceedings.

6. Compensation granted by the Tribunal = Rs.6,10,965/-

Deducting 20% contributory negligence = - Rs.1,22,193/-

Total compensation granted by this Court = Rs.4,88,772/- (Reduced)

7. The appellant Insurance Company is directed to deposit Rs.4,88,772/- (Rupees Four Lakh Eighty Eight Thousand Seven Hundred and Seventy Two only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (claimants 1 to 4 are entitled to Rs.2,50,000/-, Rs.1,00,000/-, Rs.1,00,000/- and Rs.38,772/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The appellant Insurance Company is entitled to recover the same from the owner of the vehicle / 5th respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)***.

8. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

10.04.2024

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

Tmg
To

1.Motor Accident Claims Tribunal,
I Additional District Court, Tirunelveli.

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

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.449 of 2013

10.04.2024