



C.M.A(MD)No.84 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.84 of 2024

and

CM.P.(MD).No.1470 of 2024

The Manager,
The New India Assurance Company Limited,
Through its Manager, Office at CMTS Bhavan,
70 feet Road, Ellis Nagar, Madurai.

... Appellant

Vs.

1.M.Karuppasamy

2.P.Subburaj

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order, dated 27.10.2023, made in M.C.O.P.No.660 of 2020, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Madurai.

For Appellant	: Mr.I.Robert Chandrakumar
For R1	: No appearance
For R2	: Mr.P.Ganapathi Subramanian



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JUDGMENT

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The Insurance Company has preferred this Civil Miscellaneous Appeal.

2.It is a case of injury. The Tribunal has passed the award directing the Insurance Company to pay the compensation. The contention of the Insurance Company is that the Driver was not having any license to drive heavy vehicle and this issue was not properly dealt with by the Tribunal. It is settled proposition that for driving heavy vehicle separate license is necessary. However, if the heavy vehicle is below 7500 kg, then the license granted for light vehicle is considered as valid license. In the present case it is seen from the RC Book that the weight of the JCB as 7510 kg, which is 10 kg more than the permitted weight. Therefore, this Court is of the considered opinion that there is no valid driving license.

3. In such circumstances, the Tribunal ought to have granted pay and recovery but the Tribunal had directed the Insurance Company to pay the compensation. Since the Tribunal has not granted pay and recovery, this Court is inclined to grant that relief alone. The Insurance Company shall pay and recover from the owner of the vehicle.



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4.The appellant Insurance Company is directed to deposit Rs.2,97,087/- 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.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 / 2nd 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).**

5. With the above said directions, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2024

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

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To

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- 1.Motor Accident Claims Tribunal,
(Chief Judicial Magistrate Court), Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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