



CMA(MD).No.439 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.M.A. (MD).No.439 of 2023

P. Ponnusamy,

... Appellant/Claimant

Vs

1. Shanmuganathan,

2. The Branch Manager,
Tata AIG General Insurance Company Limited,
Having Office at Peninsula,
Business Park Tower-A,
15th Floor, G.K. Mark Lower Parel,
Mumbai - 400 013.
Branch Office North Block,
3rd Floor, AA Towers, No.4 & %,
Bye Pass Road,
Madurai-625 016.

3. K. Perumal,

4. The Branch Manager,,
Liberty Videocon General Insurance Company Limited
Having Office at 10th Floor,
Tower-A, Peninsula Business Park,
G.K. Mark, Lower Parel, Delisle Road,
Mumbai-400 013,
Branch Iffuce at C6, D6, E6, F6 Level V,



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Anmol Palani,
No.88, G.N.Chetty Road,
Chennai-600 017,
Branch Office at
3rd Floor, Raja Parle Building,
No.79/2, Bye Pass Road,
Madurai-625 010.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the award made in M.C.O.P.No.9 of 2018 dated 28-10-2022 on the file of the Motor Accident Claims Tribunal (Sub Court), Mudukulathur, allow the above civil miscellaneous appeal.

For Appellants : M/s.S.Kumar
For R1 : No Appearance
For R2 : Mr.J.S.Murali
For R3 : No Appearance
For R4 : M/s.K.R.Shivashankari

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.9 of 2018, dated 28.10.2022, on the file of the Motor Accident Claims Tribunal (Sub Court), Mudukulathur.

2. The claimant has preferred this Appeal. It is the case of injury. The claimant has driven his father's two-wheeler vehicle. The offending vehicle



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owner is the first respondent in the present civil miscellaneous appeal. The first respondent has given his two-wheeler to some other person to drive the same. The said third party had committed the accident and which is accepted by all the parties. Even the first respondent, who is the owner of the vehicle has also accepted that his driver is at fault. He has deposed the same before the Court. But he is not aware of the fact whether the driver is in possession of license or not. Therefore, the Tribunal has come to the conclusion that the driver of the offending vehicle was not having valid license.

3. The Tribunal has referred the judgment rendered in ***BeliRam Vs. Rajender Kumar and another 2020 SCC Online SC 768*** and has come to the conclusion that since there is no license, the owner of the vehicle is liable to pay. The Insurance Company is vehemently opposing for granting pay and recovery. However, it is settled proposition that if there is no license, then the owner of the vehicle is liable to pay and the Tribunal ought to have directed the Insurance Company to “pay and recovery” from the owner. Hence, this Court is granting pay and recovery.

4. The second respondent/Insurance Company is directed to deposit Rs.6,87,556/- with interest at the rate of 7.5% per annum and costs to the



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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 second respondent/ Insurance Company is entitled to recover the same from the owner of the vehicle/first 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 this modification, this Civil Miscellaneous Appeal is partly allowed. No Costs.

12.03.2024

Index : yes / No
Internet : yes / No
LR



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To

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The Motor Accident Claims Tribunal (Sub Court),
Mudukulathur.



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