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C.M.A.(MD)No.1094 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 26.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

C.M.A.(MD)No.1094 of 2022

and

C.M.P(MD)Nos.11149 of 2022 & 8386 of 2023

United India Insurance Company Ltd.,  
Through its Branch Manager,  
II Floor, Xavier Building, Asisi Campus,  
PWD Office Road, Nagercoil,  
Kanyakumar. ... Appellant/2<sup>nd</sup> Respondent

Vs.

1.S.Shaila  
2.P.Kamala Jeniffer  
3.S.Jameela Jeniffer ... Respondent Nos.1 to 3/  
Petitioners  
4.Ananth ... 4<sup>th</sup> Respondent / 1<sup>st</sup> Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.06.2022 passed in M.C.O.P.No.322 of 2018 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Tirunelveli.

For Appellant : Mr.I.Robert Chandrakumar  
For R1 to R3 : Mr.M.Subbiah  
For R4 : No Appearance



## **JUDGMENT**

This Civil Miscellaneous Appeal is preferred against the award dated 22.06.2022 passed in M.C.O.P.No.322 of 2018 by the Motor Accident Claims Tribunal/III Additional District Court, Tirunelveli.

2. The second respondent in M.C.O.P.No.322 of 2018 is the appellant herein. The petitioners/claimants are the respondents 1 to 3 herein.

3. The petitioners/claimants filed the claim petition in M.C.O.P.No. 322 of 2018.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 322 of 2018 is adopted hereunder.

### **5. The brief facts of the case:**

On 08.07.2017 at about 7.00 p.m. one Selvaraj with one Subramanian as pillion rider was riding his two wheeler bearing registration number TN 01 J 6003 along NGO Colony Kamaraj Nagar road at Vallankumaranvilai. At that time from opposite direction, a tempo van bearing registration No.TN 75 C 3529 was driven by its driver



in a rash and negligent manner and dashed against the two wheeler. Due to impact the rider and pillion rider sustained injuries. The rider died after one day treatment. The deceased Selvaraj was earning Rs.16,000/- p.m. as tailor. Hence, the dependants of deceased Selvaraj filed M.C.O.P.No.322 of 2018 seeking compensation of Rs.20,00,000/-.

6. The second respondent/Insurance Company objected the claim petition by contending that the policy issued to the owner of the van was violated. Moreover, the driver of the offending vehicle had not possessed valid driving license. Therefore, the petitioners are not entitled any claim from the second respondent /Insurance Company.

7. Before the Tribunal both side adduced oral and documentary evidence. On the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.3 were marked. On the side of the second respondent, R.W.1 was examined and Ex.R.1 to Ex.R.8 were marked. After hearing both and after considering the evidences, the Tribunal has held that the accident was taken place due to the rash and negligent driving of the driver of the first respondent van and awarded compensation directing the respondents jointly and severally to pay the compensation of Rs.6,59,888/-.



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8. Aggrieved by the said award, the appellant/second respondent has preferred this Civil Miscellaneous Appeal.

9. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

10. The learned counsel appearing for the appellant/2<sup>nd</sup> respondent Insurance Company has mainly argued that the accident was occurred due to the rash and negligence driving of the driver of the first respondent, who was not possessing valid driving licence. In the same accident, the injured Subramanian filed the claim petition in M.C.O.P.NO.273 of 2018 before the Tribunal and the Tribunal ordered for pay and recovery. The learned counsel for the appellant/2<sup>nd</sup> respondent Insurance Company has not disputed the award arrived out by the Tribunal and only prayed to modify the order as pay and recovery as ordered in M.C.O.P.NO.273 of 2018, though the award copy was marked, the Tribunal failed to appreciate the same.

11. Per contra, the learned counsel for the respondents 1 to 3/petitioners submitted that the Tribunal has elaborately discussed



the matter and passed the award and further submitted that the claimants have no objection to order pay and recovery.

12. On hearing both and on perusal of records, it is clear that the accident took place upon the rash and negligent driving of the tempo van TN 75 C 3529, which belonged to the 4<sup>th</sup> respondent/1<sup>st</sup> respondent. The appellant/second respondent's main contention is that the driver of the offending vehicle had not possessed any valid driving licence. On perusal of award, there is no discussion whether the driver of the offending vehicle was having driving licence or not. The Insurance Company has marked copy of the award passed in M.C.O.P.NO.273 of 2018 passed by the Tribunal/Special Sub Judge for MCOP Cases, Tirunelveli as Ex.R.7. The copy of the same filed along with typed set. On perusal of same, it is clear that the Tribunal has passed award in M.C.O.P.No.273 of 2018 as pay and recovery terms. There is no material placed before this Court that the award was challenged by the 4<sup>th</sup> respondent/1<sup>st</sup> respondent. In this case, there is no dispute in respect of compensation arrived by the Tribunal in its award and the only dispute is that the driver of the offending vehicle was not having valid driving license and the award of the Tribunal may be modified as pay and recovery mode. It is a settled law that the Insurance Company to first



satisfy the award amount in favour of the claimants and recover the same from the owner of the vehicle in case of policy violation. It is established by the appellant/Insurance Company that the driver of the offending vehicle was not having valid driving licence by marking copy of award passed in M.C.O.P.No.273 of 2018 which was filed by the injured who sustained injuries in same accident in this case. Therefore, the compensation awarded by the Tribunal is held correct, however the same has to be modified as directing the second respondent to pay the compensation and recover the same from the first respondent.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the effect that the appellant is hereby directed to pay the compensation amount of Rs.6,59,888/- with interest @ 7.5% per annum as ordered by the Tribunal to the respondents 1 to 3 and thereafter the appellant can recover the same from the 4<sup>th</sup> respondent/owner of the vehicle;

(ii) The appellant/Insurance Company is directed to deposit the said amount, less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.322 of 2018 on the file of the Motor



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within a period of six weeks from the date of receipt of a copy of this  
order.

(iii) On such deposit being made by the appellant/Insurance Company, the claimants/respondents 1 to 3 herein are permitted to withdraw their entire share amount as apportioned by the Tribunal with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.02.2024

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

To

1.The Motor Accidents Claims Tribunal /  
III Additional District Court,  
Tirunelveli.

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



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**P.VADAMALAI, J.**

VSD

Pre - Delivery Judgment made in  
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