BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2025

CORAM:

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A(MD)No.1097 of 2013
and
M.P(MD)No.1 of 2013

National Insurance Company Limited,
Through its Branch Manager,
Office at No.81-D, Chetty Street,
Tiruchengode. ...Appellant/2nd Respondent

-Vs-

1.Mariselvam ...Petitioner
2.Kennedy ... Respondent/1st Respondent
3.Thiruvengadam Ramesh ... 3rd Respondent
4.Royal Sundaram Alliance Insurance Company Ltd.,
Through its Branch Manager,
Office at No.45 & 46, Whites Road,
Chennai-600 014. (Given Up) ... 4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988, against the order and decree dated 26.07.2007 passed in M.C.O.P.No. 844 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Tirunelveli.

For Appellant : Mr.N.S.Ramakrishna Dass

JUDGMENT

Being aggrieved over the award passed by the the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Tirunelveli, in M.C.O.P.No.844 of 2005, the Insurance Company has filed the appeal.

2.Brief facts of the case, which are necessary for disposal of the appeal is that: On 17.03.2005 at about 02.00 p.m., the first respondent/claimant was driving a lorry bearing Registration No.T.N.48-2221 belonging to the third respondent and insured with fourth respondent herein. While the lorry was travelling between Madurai to Trichy near Narasingampatti Sub Station, at that time, a lorry bearing Registration No.TN-34-B-5473 belonging to the second respondent insured with the appellant herein came from the opposite direction in a rash and negligent manner and dashed against the first respondent's lorry. Due to the said impact, the first respondent sustained serious injuries. Immediately he was taken to the Rajaji Government Hospital, Madurai as inpatient, where his right leg was amputated below knee. Alleging that the driver of the lorry bearing Registration No.TN-34-B-5473 was responsible for the said accident, the claimant laid a petition claiming compensation of Rs.10,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed a counter affidavit disputing the manner of accident, age, income, occupation of the claimant and their liability to pay compensation.

4.To substantiate the case, the claimant examined three witnesses and marked documents as Ex.P.1 to Ex.P.12. On the side of the appellant Insurance Company, two witnesses were examined and marked documents as Ex.R.1 to Ex.R.6.

5.The Tribunal, after considering the evidence of the claimant as well as the respondents, came to the conclusion that the driver of the lorry bearing Registration No.TN-34-B-5473 was responsible for the accident and directed the appellant and the second respondent herein to pay a compensation of Rs.4,73,200/- along with interest at 7.5% p.a., out of which, a sum of Rs.2,36,600/- should be deposited in Indian Overseas Bank, Palayankottai, for a period of three years and the first respondent is permitted to get interest once in three months from the bank. Challenging the said award, the present appeal is filed.

6.The appellant Insurance Company has filed the appeal only challenging the liability and they have not disputed the quantum awarded by the Tribunal and the manner of the accident.

7.Heard Mr.N.S.Ramakrishna Dass, learned counsel appearing for the appellant and perused the materials available on record.

8.The learned counsel for the appellant submitted that at the time of accident, the driver of the offending vehicle did not possess a valid driving licence. To substantiate the contention, the appellant examined R.W.1-Junior Assistant at Sivakasi Office and R.W.2-Senior Assistant, of the insurance company, Tirunelveli Division. R.W.1 deposed that he was in possessing of copy of the driving licence of the driver of the offending vehicle, which was valid only from 14.03.2002 to 13.03.2005 and had not been renewed, thereafter. The said copy was marked as Ex.R.1. R.W.2 further stated that a request was made to the owner of the offending vehicle to produce the driving license of the driver, even after the receipt of the notice under Ex.R3. The owner of the offending vehicle failed to comply with the said request and did not come forward to produce the same.

9.On a perusal of the records produced by the appellant and the Motor Vehicle Inspector report marked as Ex.P5, it is seen that in which in column No.5 of the Motor Vehicle Inspector has specifically noted the license was not produced at the time of the inspection. It is clearly established that the driver of the second respondent herein did not possess a valid and effective driving licence at the time of accident, which was expired on 13.03.2005, whereas the accident took place on 17.03.2005. Therefore, the appellant/Insurance Company had clearly established that there was a violation of policy condition consequently fastening the liability on the appellant cannot be sustained in law. The appellant prays that the award passed by the Tribunal be modified accordingly.

10. As per the settled position of law, even if in cases where there is violation of policy condition, the Insurance Company has is statutorily bound to satisfy the award amount in favour of the third party and thereafter recover the same from the owner of the vehicle. The Hon'ble Apex Court in ***ORIENTAL INSURANCE CO. LTD., V. SHRI NANJAPPAN AND ORS.*** reported in ***(2004) ACC 524 (SC)***, and in Paragraph No.7 of the above said judgment is held as follows:

"For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a

proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

11.In view of the principles laid down by the Hon'ble Apex Court, the appellant is directed to pay the award amount to the claimant at the first instance and thereafter recover from the owner of the offending vehicle as per the mode incorporated in Paragraph No.7 of *Shri Nanjappan's case* (Cited supra).

12.In the result, the award of the Tribunal is confirmed and the appeal is partly allowed with the above direction. In view of the above, the appellant

Insurance Company, shall deposit the entire award amount to the credit of M.C.O.P.No.844 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of the judgment, if the amount is not deposited already. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount, less the amount already withdrawn if any. No costs. Consequently, the connected miscellaneous petition is closed.

30.10.2025

NCC : Yes / No
Index : Yes / No
NS
To

1.The Motor Accident Claims Tribunal,
Additional District Court/
Fast Track Court No.2,
Tirunelveli.

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

R.POORNIMA, J.

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