BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	10.10.2025
Date of Pronounced	25.11.2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)No.494 of 2010
and
CMP(MD)No.1 of 2010

The Branch Manager,
The New India Assurance Company Limited.
Dharmapuri. : Appellant/2nd Respondent

Vs.

1.Minor.Manis Partheeban
(Minor petitioner represented through her
mother & next friend Tmt.Lakshmi) : 1st Respondent/Petitioner

2.D.Gunaseelan : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award, dated 02.12.2009 and made in M.C.O.P. No.182 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tirunelveli.

For Appellant : Mr.K.Murugesan

For Respondents : Mr.T.Selvakumaran – for R1
dismissed – R2

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the Appellant Insurance Company against the award dated 02.12.2009 passed in M.C.O.P. No.182 of 2007 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tirunelveli.

2.The brief case of the claimants is as follows:-

(a) On 12.12.2006 at about 4.30 p.m. the minor Manish Parthiban while returning home from his School at Valliyoor Radhapuram Road proceeding on the left side of the road from east to west, a Maxi Cab Van bearing Registration No.TN 36 D 5550 belonging to the first respondent, coming from west to east and driven by its driver in a rash and negligent manner dashed against the minor. As a result of accident the minor petitioner sustained grievous injuries including a fracture on his left shoulder and head injuries and was immediately taken to Diraviyam Hospital, Nagercoil, where he was taken treatment from 12.12.2006 to 02.02.2007 as inpatient and thereafter, continued treatment as an out patient till date.

(b) Over the occurrence, a case in Crime No.125 of 2006 was registered by the Radhapuram Police, for the offences under Sections 279 and 338 IPC.

(c) Claiming compensation of Rs 7,00,000/-, a claim petition was filed by minor petitioner's mother.

3. Resisting the claim petition, the Insurance Company filed a counter affidavit disputed the manner of the accident, the injuries sustained by the claimant and also its liability to pay the compensation to the claimant. It is further contended that the driver of the Van purchased the vehicle from its original owner Gunaseelan, but the Registration Certificate and permit of the said vehicle were stands in the name of the original owner. The policy stood in the name of previous owner. At the time of accident, the driver was not holding a valid and effective license which constituted a breach of policy condition.

4. The Tribunal, upon consideration of the oral and documentary evidence concluded that the accident occurred due to the negligent act of the driver of the van and awarded a sum of Rs.3,46,250/- as compensation to the claimant together with interest at the rate of 7.5% p.a and directed the Insurance Company to pay the award amount

within a period of one month.

5. Aggrieved by the said findings, the present Civil Miscellaneous Appeal has been filed by the Appellant Insurance Company challenging its liability as well as the quantum of compensation awarded.

6. Heard the learned counsels appearing for the parties and perused the materials available on record.

7. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?

8. Point :

Though, the appellant had raised several other grounds in the appeal, the primary contention was that the driver of the Maxi Cab bearing Registration No.TN 36 D 5550 was not holding a valid and effective driving license with requisite and the badge/transport endorsement to drive the transport vehicle at the time of accident and therefore, the insurance company ought to have exonerated from the liability.

9. On perusal, of records it is seen that the Motor Vehicle Inspector (Grade-1) was examined as R.W.1. He deposed that on 12.12.2006, he inspected the offending vehicle bearing Registration No.TN 36 D 5550. At that the time of inspection, the driving license of the driver was not produced. He came to know that the driving license of driver Shivanraj was expired.

10. Further the Administrative Officer of the insurance company was examined as R.W.2. He deposed that the driving license had expired on 12.08.2005, and the driver was not holding the necessary transport/badge to drive the transport vehicle. Ex.R1 is the inspection report of Motor Vehicle involved in accident wherein the Motor Vehicle Inspector has endorsed that the driving license was not produced. Ex.R2 is the xerox copy of driving license issued to the driver Thiru.Shivanraj, it shows that the driving license was valid from 23.09.2004 to 12.08.2005, as on the date of the accident on 12.12.2006 the license had expired. Further the driving license does not contain any endorsement or details of badge required for driving transport vehicle. Ex.R4 is the insurance policy issued in respect of the said vehicle which shows the vehicle is a commercial vehicle. Therefore, the driver was required to possess requisite badge/endorsement. Though notice was duly served on

the owner, but he failed to appear and contest the case. He failed to establish that the driver of the vehicle renewed the license or obtained necessary badge. Though the driver had previously held a valid driving license, it had expired at the time of accident, thereby constituting violation of policy condition. However, the Tribunal wrongly concluded that the driver was holding a valid driving license that no badge was required to drive the said vehicle, and therefore, the said finding is liable to be set aside. This Court holds that there was violation of the terms and conditions of policy condition on the part of the owner as well as driver.

11. Since the insurance policy stands in the name of second respondent/owner and it has not been established that the first respondent driver purchased the vehicle, the owner is vicariously liable for the act of the driver. However, the injured being a third party should not be made to suffer due to the violation committed by the owner. Since the policy was in force as on date of accident, the insurance company is directed to pay the compensation to the injured at the first instance and thereafter, recover the same from the owner in accordance with law.

12. As far as the compensation awarded under various head, this Court found that, according to Ex.P10, certificate issued by the

headmaster of the school, it was noted that since the claimant was absent for five months due to injury, his name was removed from the school records. Since the injured is a young boy, the disability resulting from the injury sustained by him has been assessed at 85%, under Ex.P11. Dr.S.Ram Guru, professor of Orthopedics and Head of Department of Orthopedics Medical College, at Tirunelveli Hospital was examined as P.W.3, categorically stated that due to alleged accident fracture left thigh bone right left collarbone and crush injury on right foot and ankle. There is pain in left hip and ankle right hip knee and ankle and left shoulder. Loss of soft tissue muscles and bone. No movement in the right ankle. Weakness and restriction of movements left hip and ankle right hip and ankle and left shoulder. Squatting and cross leg sitting was not possible, which establish that due to the accident the claimant suffered grievous injuries, and his future prospects were adversely affected. This fact clearly established that he would not be able to participate in sports events and activities in future as he did prior to the accident. Considering all relevant aspect taking into consideration of the present condition of the claimant, the compensation awarded by the Tribunal is just unreasonable does not warrant any interference.

13. This Court is of the considered view that pay and

recovery can be invoked. Accordingly, the appellant /2nd respondent Insurance Company is directed to pay the award amount to the claimant in the first instance and thereafter, recover the same from the owner of the vehicle. Point is answered accordingly.

14. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant/2nd Respondent Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum and costs, from the date of claim petition petition till the date of realization, at the first instance, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and thereafter, recover the same from the owner of the vehicle in accordance with law. This Court further noticed that the 1st respondent/claimant is a minor, aged about 7 years at the time of filing the claim petition viz., during the year 2007 by this time, he would have attained majority. If he attain majority, he could file appropriate petition to declare him as major and receive his award amount immediately. No costs. Consequently, connected Miscellaneous Petition is closed.

25/11/2025

Index:Yes/No
NCC : Yes/No

To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal/
Tirunelveli.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

R.POORNIMA, J

RM

CMA(MD)No.494 of 2010

25/11/2025