

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Judgment Reserved on	Judgment Pronounced on
01.04.2022	12.04.2022

**CORAM:**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**C.M.A(MD)No.211 of 2018  
and  
C.M.P(MD)No.3295 of 2018**

Thanikodi .. Appellant/ 1<sup>st</sup> Respondent

Vs.

1.Parameswari  
2.S.Ramalakshmi  
3.Minor S.Sapreetha  
4.Minor S.Tamilselvi  
5.Pasupathy Ammal .. Respondents 1 to 5/  
Claim Petitioners  
6.The Branch Manager,  
United Insurance Company Limited,  
Madurai Town. .. 6<sup>th</sup> Respondent / 2<sup>nd</sup> Respondent

[Minor respondents 3 & 4 are represented  
by their mother 1<sup>st</sup> respondent]

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 04.06.2010 made in M.C.O.P.No.4 of 2006, on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Periyakulam.

For Appellant : Mr.R.Suriyanarayanan

For R1 and R2 : Mr.S.Anand Chandra Sekar  
for M/s.Sarvabhauman Associates

For R3 & R4 : minors represented by R1

For R5 : No appearance

For R6 : Mr.C.Karthik

### **JUDGMENT**

The owner of the vehicle-Tractor is the appellant herein. The respondents 1 to 5 are the legal representatives of the deceased Subburaj, who died in the Road Transport Accident that taken place on 09.07.2005.

2. For the sake of convenience, the parties are referred to as per their ranking before the tribunal.

3. The claimants filed M.C.O.P.No.4 of 2016 before the Motor Accidents Claims Tribunal, Periyakulam, alleging that on 09.07.2005 at about 12.30 p.m. near Thevar Bus stop while the deceased and one Sivakumar, who is launcher of FIR were proceeded from Kondamanaikanpatti to Usilampatti, the deceased Subburaj ride the Hero Honda motorcycle bearing Registration No.KL 2 G9969, followed by the launcher of FIR, who ride the two wheeler bearing Registration No.TN 60B4587, the 1<sup>st</sup> respondent driver drove the tractor bearing Registration No.TN59 V 2372 with traillor bearing Registration No.TN59 V 2948 in front of two wheeler driven by the deceased in a rash and negligent manner and without any signal, suddenly turn his vehicle on the right side of the cashew nut Firm near Thevar Bus stop, due to which the deceased Subburaj dashed against the tractor and thereby the deceased Subburaj sustained injury on his head and died on the spot.

4. Before the Tribunal, the insurance company filed counter statement stating that on the date of accident, the driver of the accident does not own any driving licence to drive the vehicle, namely, Heavy Motor Vehicle.

5. On behalf of the claim petitioner, the wife of the deceased was examined as PW1, occurrence witness is examined as PW2 and other person is examined as PW3 and Exs.P1 to P4 were marked on behalf of the respondent on Court summon Motor Vehicle Inspector attached to the concerned Road Transport Office was examined as RW1 and filed Ex.R1-policy copy. The Assistant from the insurance company is examined as RW2 and Ex.R2-legal notice issued calling upon the owner of the vehicle and Tractor to produce the driving license of the driver at the time of the accident, but he has not produced any such driving license.

6. The Tribunal based upon the oral evidence of PW2, the occurrence witness coupled with Ex.P1-FIR and Ex.P3-charge sheet has held that due to the sudden turn of the Tractor on the right hand side, the accident has taken place and the driver of the Tractor ought to have been seen the vehicle is coming behind the Tractor ought to have put necessary signal before taking the right turn to reach his designation, accordingly, held that the accident had taken place due to the rash and negligence driving of the driver of the Tractor. As per the version of RW1

no licence was issued to the driver of the Tractor as per Ex.P3-charge sheet filed by the concerned police before the jurisdictional Magistrate, there is a specific charge that he drove the vehicle without valid licence. According to the petitioner's argument before the trial Court, the driver has pleaded guilty, though no document has been filed before the Court below and hence, the Tribunal has hold that the owner of the vehicle is liable to pay the compensation and exonerated the insurance company and awarded compensation. Challenging the said order of exoneration of Insurance Company, the owner of the vehicle has come before this Court with this appeal.

7. The learned counsel for the appellant would contend that though the driver of the offending vehicle does not posses driving licence, the insurance company cannot be exonerated from the liability and they have to pay and recover and relied upon the *National Insurance Company Limited vs. Swaran Singh & others reported in 2004 (1) TNMAC 104 (SC)*.

8. The learned counsel for the Insurance Company has relied upon the judgment reported in **2020 (2) TNMAC 455** in the case of ***Beli Ram Vs Rajinder Kumar and another***. In the case law of Hon'ble Apex Court, it is held that “when a tort-feasor failed to renew the driving license within 30 days of expiry of driving license, as per the provision of the Motor Vehicle Act, the Insurance Company is not liable to pay compensation”, as owner of the vehicle has committed breach of terms of policy by entrusting the vehicle to a person not possessing a valid driving license.

9. I had an occasion to consider the above decision in C.M.A.No. 1706 of 2016, wherein I followed the decision rendered by brother Justice Mr.G.Jayachandran in C.M.A.No.1746 of 2015 and held that in respect of the Workmen's Compensation Act alone, wherein, employer-employee relationship is vital part and precondition for maintaining claim petition under Workmen's Compensation Act and therein, for non-possession of the driving licence, the insurance company can be exonerated. However, when the claim petition is filed under Motor Vehicles Act, the Insurance Company may be directed to pay and recover

the compensation amount from the owner of the vehicle. Accordingly, the order of the Tribunal exonerating the liability of the Insurance Company is hereby set aside and the Insurance Company is directed to pay the quantum of compensation fixed hereunder and recover the same from the owner of the vehicle.

10. Accordingly, this Court holds that the insurance company is not liable to pay the compensation, however, judicial principle of pay and recovery is made applicable by judicial pronouncement.

11. With these observations, the award passed by the Tribunal is hereby modified on the point of quantum of compensation. I find that both the heads of the compensation granted in various heads appears to be just and reasonable and does not warrant any interference.

12. In fine, this Civil Miscellaneous Appeal stands allowed in part to the limited extent that the insurance company shall pay and recover the award amount from the owner of the vehicle and except this modification, the award passed by the Tribunal is hereby confirmed. The

insurance company is directed to deposit the compensation awarded by the Tribunal, ie., Rs.4,46,000/- together with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, to the credit of M.C.O.P.No.4 of 2006, on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Periyakulam, within a period of eight weeks from the date of receipt of a copy of this order and then recover the same from the appellant/owner of the vehicle in the manner known to law. On such deposit being made by the sixth respondent/Insurance Company, the claimants are permitted to withdraw the same, as apportioned by the Tribunal, after following the due process of law. No costs. Consequently, connected miscellaneous petition is closed.

**12.04.2022**

Index:Yes/No

Internet:Yes/No

PJL

To

1. The Additional District and Sessions Judge,  
Motor Accidents Claims Tribunal,  
Periyakulam.
  
2. The Record Keeper,  
Vernacular Section,

Madurai Bench of Madras High Court,  
Madurai.

**RMT.TEEKAA RAMAN.,J.**

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**PRE-DELIVERY JUDGMENT  
MADE IN  
C.M.A(MD)No.211 of 2018**

**12.04.2022**