

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.330 of 2015

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
Katpadi Road,
Vellore.

.. Appellant/Respondent II

Vs.

1. Mohan ..1st Respondent/Petitioner
2. D.Manogaran .. Respondent II/Respondent I

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 21.07.2012 made in M.C.O.P No.168 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Tirupattur, Vellore District.

For Appellant : Mr.J.Chandran

For 1st Respondent : Mr.Parivallal

For 2nd Respondent : No appearance

J U D G M E N T

Though the appellant/Insurance Company is aggrieved over the quantum of compensation awarded by the Tribunal, the main challenge in this appeal is the liability fixed on the Insurance Company to compensate the claimant.

2. For the grievous injuries sustained in an accident which occurred on 21.11.2009, the claimant, who is a Water Tank Operator, earning a sum of Rs.5,000/- per month from his avocation, filed a claim petition before the Tribunal seeking a sum of Rs.5,00,000/- as compensation.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.1,13,000/- as compensation to the claimant under the following heads:

S.No.	Heads	Compensation
1	Pain and Suffering	Rs. 15,000.00
2	Loss of income	Rs. 13,500.00
3	Transport Charges	Rs. 7,500.00
4	Extra Nourishment	Rs. 5,000.00
5	Medical expenses	Rs. 2,000.00
6	Permanent Disability	Rs. 70,000.00
Total		Rs.1,13,000.00

4. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the 1st respondent/claimant.

5. Learned counsel for the appellant/Insurance Company contended that the 2nd respondent herein, who drove his Hero Honda Bike and dashed against the claimant, did not possess valid driving licence at the time of accident and that the Tribunal erred in fastening the liability to compensate the claimant on the appellant/Insurance Company. According to the learned counsel, when the 2nd respondent is responsible for the accident, it is he who is solely responsible to compensate the claimant.

6. It is seen that the alleged accident occurred when the 2nd respondent, who rode his Hero Honda Motor Cycle dashed against the claimant, who was riding his Bicycle. Also, it is seen that the 2nd respondent did not hold valid driving licence at the time of accident. Hence, it is the contention of the appellant/Insurance Company that they are not liable to compensate the claimant and it is only the 2nd respondent, who is liable to pay compensation to the claimant. This Court finds force in the submissions of the counsel appearing for the appellant/Insurance Company that when the owner of the vehicle dispossesses valid driving licence, the Insurance Company cannot be asked to "pay and recover".

7. It is settled law that the Insurance Company cannot be asked to compensate the claimant, when the driver of the vehicle insured with it, did not possess valid driving licence at the time of accident. Hence, this Court holds that the Insurance Company shall pay the entire award amount to the claimant along with accrued interest and recover the same from the 2nd respondent/owner-cum-driver of the alleged Motor Cycle.

8. Though there is not much dispute as regards the quantum awarded by the Tribunal, considering the age of the claimant, his avocation, injuries sustained by him and the

percentage of disability at 35%, this Court is not inclined to interfere with the same.

9. The Civil Miscellaneous Appeal is ordered accordingly, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. It is made clear that if no amount is deposited so far, the appellant/Insurance Company is directed to deposit the entire award amount together with accrued interest to the credit of M.C.O.P.No.168 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tirupattur within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To :

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur, Vellore District.

2. The Section Officer
VR Section,
High Court, Chennai 104.

1 cc to Mr.J.Chandran, Advocate, sr.15492

C.M.A.No.330 of 2015

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