

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1429 & 1430 of 2012
M.P.Nos.1 & 1 of 2012

The Divisional Manager,
New India Assurance Company Ltd.,
Officers Line, Vellore.

.. Petitioner in
both the C.R.Ps

Vs.

1. D.Durai

.. 1st Respondent in
C.R.P.(NPD).No.1429/2012

1. Moorthi

.. 1st Respondent in
C.R.P.(NPD).No.1430/2012

2. Nandakumar

3. V.P.Murali

4. The Divisional Manager
Oriental Insurance Co. Ltd.,
Arcot Road, Jambubala Complex,
Vellore.

.. Respondents 2 to 4
in both the C.R.Ps

PRAYER: Civil Revision Petitions filed Under Article 227 of the Constitution of India, against the judgment and decree dated 08.03.2011, made in M.C.O.P.Nos.251 and 252 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore.

For Petitioner : Mr.K.Vinod

For Respondents : No appearance

ORDER

These civil revision petitions have been filed against the judgment and decree dated 08.03.2011, made in M.C.O.P.Nos.251 and 252 of 2008, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore.

2. The petitioner is second respondent, first respondent is the claimant and respondents 2 to 4 are the respondents 1, 3 and 4 in M.C.O.P.Nos.251 and 252 of 2008, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore. The first respondent in both the civil revision petitions filed claim petitions in M.C.O.P.Nos. 251 and 252 of 2008, claiming a sum of Rs.1,50,000/- each for the injuries sustained by them in the accident that occurred on 23.10.2007. The first respondent in both the civil revision petitions along with others on 23.10.2007, travelled in a Auto, bearing Registration No. TN-23-H-8577, belonging to the third respondent, insured with the fourth respondent. At that time, a Tata Ace, bearing Registration No.TN-23-AB-5924, drove in a rash and negligent manner, came from opposite direction and dashed against the auto rickshaw, due to which the first respondent in both the civil

revision petitions and others sustained injuries. An FIR was registered against driver of the Tata Ace and therefore, claimed compensation against the petitioner and other respondents. The respondents 1 and 3 before the Tribunal, remained exparte. The petitioner and fourth respondent filed separate counter, blaming the driver of other vehicle. The petitioner also further stated that the driver of the Tata Ace was not having valid driving licence and therefore, the petitioner is not liable to pay any compensation. The fourth respondent in the counter affidavit stated that driver of the Tata Ace is only liable and the driver did not have any badge from the RTO Office and due to that, the fourth respondent is not liable to pay any compensation.

3. Before the Tribunal, joint trial was conducted. The first respondent in both the civil revision petitions and other claimants and one Dr. Shanmugasundaram was examined as PW1 to PW4 and marked 12 documents as Ex.P1 to P12. One Bhuvaneshwaran, clerk of the Legal Department of the petitioner was examined as RW1 and marked one document, Investigation Report, dated 28/07/2008 as Ex.R1.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the first respondent in both the civil revision petitions and other claimants are eligible to claim compensation. Considering Ex.P2 and Ex.P8, awarded a sum of Rs.12,000/- each to the first respondent in both the civil revision petitions. The Tribunal directed the petitioner and respondents 2 to 4 to pay a sum of Rs.12,000/- as compensation to each claimant and directed the petitioner to pay 50% award amount and fourth respondent to pay the remaining 50% and ordered pay and recovery to the fourth respondent from the third respondent.

5. Against that order dated 08.03.2011, made in M.C.O.P.Nos.251, 252 of 2008, the petitioner has come out with the present Civil Revision Petition.

6. Though the Civil Revision Petitions are filed on various grounds, when the Civil Revision Petitions are taken up for hearing, the learned counsel appearing for the petitioner submitted that though the Tribunal held that first respondent is not having badge, valid licence and held that the petitioner is not liable to pay any

compensation. While passing order, the pay and recovery was not ordered. Only for the limited purpose, the counsel appearing for the petitioner sought for a direction to modify the award, directing the petitioner to pay the amount at the first instance and recover the same from the third respondent.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though notice was served on the respondents and their names were printed in the cause list, there is no representation either in person or through counsel.

8. From the records, it is seen that the learned Judge held that though the petitioner is not liable to pay the amount, in the conclusion portion, the learned Judge has directed the petitioner to pay 50% of the amount award and did not direct the petitioner to pay at the first instance and recover the same from the third respondent.

9. In view of the reason given by the Tribunal that petitioner is not liable to pay compensation and in view of the submission of the

V.M.VELUMANI, J.

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counsel for the petitioner, this award is modified to the extent that petitioner is directed to pay the 50% of the award amount at the first instance and recover the same from the owner of the vehicle/third respondent. With the above modification, these civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2017

Index : Yes/No
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