

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALACivil Miscellaneous Appeal No.2398 of 2017
and C.M.P.No.12942 of 2017

The Oriental Insurance Company Limited,
City Branch, No.12, 110, Madhavaram
High Road, Perambur,
Chennai - 600 011

... Appellant

..VS..

1. Govindammal
2. T.L.Jamal Hussain
3. T.Govindasamy

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 31.05.2002 made in M.C.O.P.No.1662 of 1993 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr. S.J.Jagdev

सत्यमेव जयते

J U D G M E N T

This Appeal has been filed by the appellant / Insurance Company, challenging the liability as well as the quantum of compensation passed by the Tribunal in favour of the petitioner, Govindammal, in M.C.O.P.No.1662 of 1993.

2. In MCOP No.1662 of 1993, the first respondent, T.L.Jamal Hussain is the driver and the second respondent is the Insurance Company and the third respondent Govindasamy is the owner of the vehicle.

3. By the award, dated 31.05.2002, the Motor Accident Claims Tribunal has directed the owner, driver and the Insurance Company, all together, to pay compensation of Rs.34,000/-, either jointly or severally.

4. This award is under challenge by the Insurance Company on the ground that there is no liability on the part of the Insurance Company to satisfy the award.

5. The contention of the learned counsel appearing for the appellant / Insurance Company is that the Tribunal committed error in fixing the liability on the part of the Insurance Company, despite proof having been adduced to show that the driver of the scooter had no valid driving licence to drive the two-wheeler, through marking Ex.R-2-certificate, issued by the RTO, Vellore.

5.1. It is the further contention of the learned counsel that even though the driver had been impleaded as a party, in this case, he did not examine himself to disprove the negligence or non-availability of driving licence.

6. In order to appreciate the contentions raised, it is necessary to find out the reasonings given by the Tribunal while fixing the liability on the part of all the three, viz., owner, driver and the Insurance Company.

7. The Tribunal has relied upon the evidence of R.W.1, who is the Investigating Officer of the Insurance Company. During the course of the evidence, the Officer has admitted that there is a coverage of policy with reference to the vehicle on the date of accident. But a specific defence has been taken that the driver did not have the valid driving licence.

WEB COPY

8. The Tribunal has pointed out that the driver was having a driving licence to drive Light Motor Vehicle and not a specific licence to run the scooter, but it is not pointed out what is the requirement to drive the scooter and in what way the licence issued to drive the

Light Motor Vehicle is not sufficient to drive the scooter. In other words, in what way, the driving licence already issued in favour of the driver was not effective or valid driving licence is not pointed out neither in the pleadings nor in the evidence.

9. The witnesses examined on behalf of the appellant / Insurance Company has admitted that it is not known to him as to whether the driver had obtained licence from any other place.

10. It is the duty of the Investigating Officer to completely investigate each and every aspects. But, he himself has stated that he has chosen to examine neither the owner of the vehicle nor the driver of the vehicle.

11. Under the stated circumstances, the contention that the licence possessed by the driver is not a valid or effective driving licence cannot be accepted.

12. So far as the quantum of compensation is concerned, the Tribunal has considered the fact that there has been inpatient treatment of 15 days and thereafter, outpatient treatment. There

had been fracture in the right leg. Because of the shaky teeth, the injured was not able to take food. He was a Mason. The Tribunal has considered the quantum on eight heads, but has awarded only a sum of Rs.34,000/-. In a case of fracture and consequent permanent disability, the award of Rs.34,000/- cannot be said to be excessive.

13. Therefore, the Appeal has no merits and thus, the Civil Miscellaneous Appeal is dismissed, even though the delay has been condoned. No costs. Consequently, the connected CMP is closed.

12. The appellant / Insurance Company is directed to deposit the amount of compensation, as awarded by the Tribunal, along with interest at 9% per annum (as ordered by the Claims Tribunal), from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Accounts of the major claimant, through RTGS.

01.08.2017

Index : Yes / No
Web : Yes / No
srk

Dr. S.VIMALA, J.,

srk

To

1. Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.
2. The Section Officer, V.R.Section, Madras High Court,
Chennai 104



C.M.A.No.2398 of 2017
& C.M.P.No.12942 of 2017

WEB COPY

01.08.2017