

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3022 of 2008

R.Sarathy

...Appellant/Petitioner

..vs..

1.G.Selvam

2.The Divisional Manager,
United India Insurance Company Limited,
First Floor of TKM Complex,
No.46-51, Katpadi Road,
Vellore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 13.11.2006 in M.C.O.P.No.460 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.D.Bhaskaran for R2
R1 Not Ready Notice.

JUDGMENT

The appellant is the claimant in M.C.O.P.No.460 of 2003 on the file of the Subordinate Judge, Motor Accidents Claims Tribunal, Vellore. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking a compensation of Rs.3 lakhs for the injuries sustained by him, in a road accident that took place on 01.10.2003.

2. The brief case of the appellant/claimant is as follows:

On 01.10.2003, the appellant/claimant was travelling in an Autorickshaw bearing Registration No. TN 23 F 9623 as a passenger on the Main Road of Kodaikkal, Vellore District. At about 10.00 pm, when he was nearing Perunkanchi Earikkarai, the driver of the Autorickshaw belonging to the first respondent drove the vehicle rashly and negligently, as a result of which, the autorickshaw toppled and the appellant/claimant sustained injuries all over his body. He was immediately rushed to the

Government hospital at Vellore.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the Autorickshaw bearing Registration No. TN 23 F 9623, was the cause of accident and that since the said Autorickshaw was insured with the second respondent, the United India Insurance Company Limited, Vellore, both of them are jointly and severally liable to pay compensation to him. The first respondent/the owner of the Autorickshaw remained absent before the tribunal and therefore, he was set ex-parte. The second respondent, the United India Insurance Company Limited, Vellore, contested the claim petition by filing a counter.

4. The tribunal after analysing the evidence on record, awarded a compensation of Rs.56,000/- together with interest at the rate of 6% per annum to the appellant/claimant and directed the owner of the Autorickshaw to pay the entire compensation amount and the Insurance Company was exonerated from paying any amount, since the driver of the Autorickshaw was found to have driven the Autorickshaw without a valid driving license on the date of accident. Aggrieved over the orders passed by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.C.Prabakaran, learned counsel appearing for the appellant contended that, even though the owner of the said Autorickshaw did not possess a valid driving license on the date of accident, the tribunal should have directed the second respondent/ Insurance Company, to pay the compensation amount and then recover the same from the owner of the vehicle. Since no recourse to pay and recovery is adopted by the tribunal, the entire order passed by the tribunal has got to be set aside. Reliance was also placed on the decision in Oriental Insurance Company Ltd., Vs. Nanjappan and others reported in AIR 2004 Supreme Court 1630 (Civil Appeal No.1012 of 2004 dated 13.02.2004), wherein it has been held that, when there is no driving license, the insurer shall pay the quantum of compensation fixed by the tribunal and recover the same from the owner of the vehicle.

6. The law on this point is now well settled that when there is no driving license or fake license, the Insurance Company should pay the amount of compensation to the claimant and then recover the same from the owner of the vehicle. Therefore, the order of the Tribunal in exonerating the Insurance Company from paying the compensation to the claimant is liable to be set aside.

7.No arguments were advanced by the learned counsel for the appellant with regard to the quantum of compensation awarded by the tribunal. It is also pertinent to point out that the accident took place in the year 2003 and the tribunal has arrived at the compensation based on the legal principles, which were in vogue at that time and I see no reason to interfere with the findings recorded by the tribunal with regard to the quantum of compensation. However, the order passed by the tribunal, exonerating the Insurance Company is liable to be set aside.

8. In the result, the Civil Miscellaneous Appeal is allowed and the second respondent/United India Insurance Company Limited, Vellore, is directed to pay the entire compensation amount of Rs.56,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant herein, within a period of four weeks from the date of receipt of copy of this order and then recover the same from the owner of the Autorickshaw bearing Registration No. TN 23 F 9623 in the same proceedings. No order as to costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

vr/bga

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Vellore District.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.C.Prabakaran, Advocate sr 85957.

+1 CC to Mr.D.Bhaskaran, Advocate sr 86142.

C.M.A.No.3022 of 2008

EV(CO)
SP(28/01/2019)