

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2836 of 2005

Mrs. Kamala Menon

... Appellant / 1st Respondent
owner of the vehicle.

...Vs...

1. Mr. C.Mani

2. M/s. New India Assurance Co. Ltd.,
No.32 1st Avenue, Indira Nagar,
Chennai 600 010

...2nd Respondent / 2nd Respondent
Claimant & Insurer.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 22.12.2014 made in MCOP No.1129 of 1998 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr. A.R.Karunakaran

For Respondents : Mr. J.Chandran, for R-2.

J U D G M E N T

This Appeal is preferred by the owner of the vehicle / appellant herein against the award, insofar as it directs the Insurance Company / second respondent herein to recover the compensation payable by them to the claimant/first respondent herein from the appellant.

2. The one and only issue raised in this Appeal is, whether the presumption of the Claims Tribunal that the driver of the vehicle did not have valid licence at the time of accident is justified.

3. According to the claimant / C.Mani, he was aged 25, who was working as Mason, met with an accident on 09.05.1997, at Mechanical Road, D/N8 North 3 Km chetpet. In the said accident, he sustained grievous injuries. Stating so, he claimed a sum of Rs.2,00,980/- as compensation.

4. After the Insurance Company filing the counter, the Tribunal framed necessary issues for consideration and based on

the evidence had awarded a compensation of Rs.83,650/- in favour of the claimant to be payable by Insurance Company and thereafter, recover it from the owner.

5. Heard the learned counsel for the appellant and the second respondent.

6. Today, when this matter was taken-up for consideration, the learned counsel for the appellant / owner of the vehicle submitted that the driving licence of the appellant's son, who was the driver at the time of accident, was made available before this Court as early as in 2005 and to receive such a document, CMP was also filed. The learned counsel expressed that as the accident itself was on 09.05.1997, instead of remanding the matter back to the Tribunal, this Court can accept the document and give the final verdict.

6.1. The learned counsel for the second respondent / Insurance Company also agreed for the procedure to be adopted.

6.2. In view of the said submissions made and also in view of the admission made by the appellant, in the counter statement filed before the Tribunal in paragraph 3, to the effect that the vehicle was driven by the appellant's son, who had a valid driving licence at the time of accident, the said document (driving licence of the appellant's son) was marked as Ex.C-1, vide the order, even dated, in CMP No.14610/2005.

7. The learned counsel for the appellant / owner of the vehicle submitted that, in view of the marking of Ex.C-1 before this Court, the adverse inference made by the Tribunal on the issue of driving licence has no legs to stand; the Tribunal is not justified in ordering the recovery of the compensation payable by the second respondent from the appellant, when she had paid premium for the policy and the same was in force during the date on which the accident occurred.

8. The Tribunal, while pronouncing verdict, has observed that the accident had happened only on account of the rash and negligent driving on the part of the driver of the vehicle, who has no driving licence, and ultimately has awarded compensation of Rs.83,650/- and directed the Insurance Company to pay and recover it from the owner.

8.1. The said contention cannot be countenanced now, in lieu of the driving licence of the driver of the vehicle, which is marked as Ex.C-1 before this Court, today. A perusal of the said document would establish that the driver of the vehicle was having an effective and valid driving licence on the date of accident, viz., on 09.05.1997.

9. The only person, who is entitled to plead that the driver of the vehicle did not have valid licence while he met with an accident would be the Insurance Company and no one else.

9.1. This Court is of the view that as the Insurance Company remained exparte before the Tribunal, it ought to have presumed that the driver did not have valid licence. Further, the accident had occurred on 09.05.1997 during the currency of the Insurance Policy bearing No.31/72404/11957, which was in force from 31.12.1996 to 30.12.1997. Based on this fact also, this Court is of the firm view that the Insurance Company alone is liable to pay compensation.

10. Since no contention has been raised by the learned counsel for both sides with regard to the quantum, this Court is not inclined to go further on that issue.

11. In view of the above reasonings, this Court hereby concludes that the liability is only on the part of the second respondent / Insurance Company, who is the insurer of the vehicle, involved in the accident. In the result, the Appeal filed by the owner of the vehicle, is allowed, so far as the liability is concerned and it is dismissed so far as the issue regarding the quantum of compensation is concerned. The award is modified, exonerating the owner of the vehicle from the liability and directing the second respondent / Insurance Company to pay the compensation of Rs.83,650/- along with interests and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Upon such deposit, the Tribunal shall transfer the said amount to the Savings Bank Account of the injured / claimant / first respondent herein. No costs.

Sd/-

Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.

Copy To : The Section Officer, V.R.Section, High Court, Madras

+1cc to Mr.A.R.Karunakaran, Advocate SR.No.51503

+1cc to Mr.J.Chandran, Advocate SR.No.51259

C.M.A.No.2836 of 2005

VBA (CO)
GMV (26/11/2019)



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