

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3385 of 2009
and M.P.No.1 of 2009

The Manager,
Cholamandalam MS General Insurance Co. Ltd.,
II Floor, Ambur Salai,
Pondicherry.

... Appellant /2nd Respondent

Vs

1. Minor Mahendran,
(Rep.by his father & NF Karunakaran)
No. 25, Pudhuthuru,
Vambakeerapalayam,
Pondicherry.

... 1st Respondent/Petitioner

2. S.Kanagasabai
(R2 exparte before Lower Court and
hence notice may be dispensed with).

... 2nd Respondents/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against award dated 26.09.2008 made in MCOP.No.1304 of 2005 on
the file of the Motor Accidents Claims Tribunal, Additional
Sub Judge, Pondicherry.

For Appellant : Mr. N.Vijayaraghavan

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
Insurance Company against the award of a sum of Rs.70,000/-
towards compensation to the first respondent, due to the
injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 08.12.2004, at 08.00 a.m.,
the first respondent/claimant was travelling as a cleaner in the
Bajaj Minidor Pickup Van bearing Reg.No.PY 01 X 4741 belonging
to the second respondent and insured with the appellant
Insurance Company. When the said van was proceeding in the PONDY
- Cuddalore Main Road, due to the rash and negligent driving of

its driver, the vehicle got capsized. Due to the said impact, the first respondent sustained grievous injuries in his leg and all over the body and he lost all fingers in his left foot. He filed a claim petition claiming a sum of Rs.5,00,000/- as compensation before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.70,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the injured had travelled in the vehicle as unauthorised passenger, since he was not covered under the policy being a passenger in a goods vehicle. Further, it is submitted that the driver of the Bajaj Minidor Pickup Van bearing Registration No. PY 01 X 4741, was not having valid and effective driving licence at the time of accident and hence the Insurance Company is not liable to pay any compensation to the claimant.

5.Heard the learned counsel appearing for the appellant and perused the materials available on record carefully and meticulously.

6.Even though this Court ordered notice of admission and a conditional order of stay has been passed on 16.12.2009, the appellant Insurance Company has not taken proper steps to serve papers to the first respondent, even at this length of time. However, considering the paucity of time, this Court is inclined to dispose of this appeal on merits.

7.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

8.P.W.1-Karunakaran, father of the injured, deposed before the Tribunal that only since the driver of the van drove it in a rash and negligent manner, the accident had occurred. It was put forth on behalf of the Insurance Company that the second respondent/owner of the vehicle had violated the conditions laid down in the policy by not possessing the valid driving licence and apart from that, the claimant travelled in the vehicle as unauthorised passenger and hence the Insurance Company is not liable to pay any compensation to the claimant.

9.With regard to negligence, considering the evidence of R.W.1-driver of the van that the vehicle was driven by him at the time of accident and that he was responsible for the accident and the deposition of P.W.1-father of the injured and

in the absence of any contra evidence on the side of the Insurance Company, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van. With regard to non-possession of valid driving licence by the driver of the van, the Tribunal has observed that the insurer has to prove that the driver was not having the proper driving licence at the time of accident. With regard to the argument put forth on the side of the Insurance Company that there was violation of policy conditions by the owner of the van on the ground that the injured travelled as unauthorised passenger, the Tribunal accepted the same and accordingly ordered the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle. Having given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the van, the Tribunal has directed the appellant Insurance Company, being the insured for the said vehicle, to pay the compensation and since there was violation of policy conditions, the Tribunal permitted the Insurance Company to recover the compensation from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and fixed the negligence on the part of the driver of the van and has correctly ordered for pay and recovery.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The first respondent / claimant would have attained majority by now. Hence, on such deposit being made, the first respondent is permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amount in the manner known to law.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

av/km

To

1. The Additional Sub Judge,
Motor Accident Claims Tribunal,
Pondicherry.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 76293

C.M.A.No.3385 of 2009
and M.P.No.1 of 2009

PM(CO)
GN(16/10/2020)



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