

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2335 of 2011

Velusamy ...Appellant/Claimant

vs.

1.S.Yusuf

2.M.Dhanapalan

3.M/s.National Insurance Co. Ltd.,
Division No.10,
Branch Office,
No-7, Raja Street,
Gobichettipalayam,
Erode District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.11.2009 passed in MCOP.No.389 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court-II, Gobichettipalayam.

For Appellant : Mr.S.Kamadevan

For Respondents : Mrs.R.Sreevidhya for R3
No appearance for R1 and R2

J U D G M E N T

The appellant is the claimant in MCOP.No.389 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court-II, Gobichettipalayam. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident on 24.12.2006.

2. The case of the claimant in nutshell is as follows:

On 24.12.2006, the claimant was riding his bicycle along with his son on Sathy - Bhavanisagar road and at about 05.00 pm, a Maruthi Omni Van bearing Registration No. TN 34 D 5904,

belonging to the second respondent, hit the bicycle, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Maruthi Omni Van bearing Registration No. TN 34 D 5904, belonging to the second respondent, was the cause of the accident and that since the said omni van was insured with the National Insurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation.

3. The respondents 1 and 2 (driver and owner of the Omni Van respectively) remained absent before the Tribunal and therefore, they were set exparte. The National Insurance Company Limited contested the claim petition. The learned Judge, Fast Track Court-II / Motor Accident Claims Tribunal, Gobichettipalayam after analysing the evidence on record, awarded a compensation of Rs.1,01,265/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal however exonerated the Insurance Company from paying compensation to the claimant, since the driver of the Maruthi Omni Van bearing Registration No. TN 34 D 5904, did not possess a valid driving licence on the date of the accident. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.S.Kamadevan, learned counsel appearing for the appellant/ claimant contended that as per the settled legal principles of law, in the absence of a valid driving licence, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle.

5. Heard Mrs.R.Sreevidhya, learned counsel appearing for the third respondent. No appearance for the respondents 1 and 2.

6. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. In the facts and circumstances of the present case, the orders passed by the Tribunal exonerating the Insurance Company from paying the award amount is liable to be set aside. Therefore, the National Insurance Company Limited is directed to pay the award amount to the claimant in the first instance and then recover the same from the owner of the Maruthi Omni Van.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant/ claimant. A perusal of the orders passed by the Tribunal also shows that the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.1,01,265/- and therefore, the quantum of compensation awarded by the Tribunal is upheld.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed partly. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The third respondent / National Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.1,01,265/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.389 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court-II, Gobichettipalayam within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Maruthi Omni Van bearing Registration No. TN 34 D 5904 on the same cause of action.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Fast Track Court-II,
Gobichettipalayam.

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

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srg 16/04/2020