

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2696 of 2011
and
MP.No.1 of 2011

Royal Sundaram Alliance Insurance Co. Ltd.,
No.405-A, Palaniappa Street,
Erode.Appellant/Respondent 2

vs.

1.Muniyappan
2.Neethikumar

... Respondents/Petitioner & Respondent 1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.05.2010 passed in MCOP.No.172 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court, Dharmapuri.

For Appellant : Mrs.Elveera Ravindran

For Respondents : Mr.V.Kumaravelan for R1
No appearance for R3

R2-Died

J U D G M E N T

The appellant / Royal Sundaram Alliance Insurance Company, the second respondent in MCOP.No.172 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court, Dharmapuri has filed the present appeal. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident on 31.12.2003.

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

On 31.12.2003, the claimant was riding his bicycle on Krishnagiri - Dharmapuri National Highways from Chappanipatti to Kaarimangalam and about 06.30 pm, a speeding Hero Honda motorcycle bearing Registration No.TN 29 E 7295 hit him, as a result of which, he fell down and

sustained injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The Royal Sundaram Alliance Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional District Judge, Fast Track Court / Motor Accident Claims Tribunal, Dharmapuri while awarding a compensation of Rs.3,27,292/- together with interest at the rate of 7.5% per annum to the claimant, held that the Insurance Company is liable to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the Royal Sundaram Alliance Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.Elveera Ravindran, learned counsel appearing for the appellant contended that though sufficient evidence was adduced by the respondents to show that the rider of the motorcycle was not having a valid driving licence on the date of the accident, the Tribunal fastened liability on the Insurance Company and therefore, the same has got to be set aside.

5. Heard Mr.V.Kumaravelan, learned counsel appearing for the first respondent / claimant. No appearance on behalf of the second respondent.

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 directing the Insurance Company to pay the award amount is liable to be set aside.

Therefore, the Royal Sundaram Alliance Insurance Company is directed to pay the award amount to the first respondent/ claimant in the first instance and then recover the same from the owner of the motorcycle.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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

(iii) The present appellant / Royal Sundaram Alliance Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.3,27,292/- (less the amount already deposited) 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.172 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court, Dharmapuri within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the motorcycle bearing Registration No. TN 29 E 7295 on the same cause of action.

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

Sd/-

Assistant Registrar

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

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To

WEB COPY

1.The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court,
Dharmapuri.

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

+2cc to Mr.V.Kumaravelan, Advocate, S.R.No.92226,92061
+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.91995

CMA.No.2696 of 2011
and
MP.No.1 of 2011

SR (CO)
CB (27/07/2020)



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