

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3176 of 2011
and
M.P.No.1 of 2011

The Branch Manager,
National Insurance Co. Ltd.,
F-45, Jawarlal Nehru Street,
Circle 25,
Neyveli Town,
Kurinchipadi Taluk. Appellant/2nd Respondent

.. Vs ..

1. Rathinavel1st Respondent/Petitioner
2. Asaithambi2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.03.2011 made in M.C.O.P.No.22 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Neyveli.

For Appellant : Mr.S.Vadivel

For R-1 : Mr.A.Arasu Ganesan

For R-2 : Mr.B.Suresh

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the Judgment and decree dated 31.03.2011 passed by the Motor Accidents Claims Tribunal (Subordinate Court), Neyveli, in M.C.O.P.No.22 of 2010.

2. The accident in this case happened on 19.06.2009 at about 5.15 p.m. near Vallalar Sutha Sanmaarkka Sangam at Neyveli. When the injured/claimant, aged about 52 years, working at Neyveli

Lignite Corporation at Neyveli, was riding his Motor Cycle bearing Registration No.PY-01/AK.5711 from West to East at Thiruvalluvar road, a vehicle viz., Bajaj Platina two wheeler bearing Registration No.TN-31/AA 0138 was driven by its driver in a rash and negligent manner and dashed against the two wheeler of the injured/claimant and as a result of which, the injured/claimant sustained grievous head injuries on his back side and also sustained injuries all over the body. Immediately after the accident, the injured/claimant was taken to N.L.C. Government Hospital and thereafter, he was admitted in Apollo Hospital, Chennai, and taken treatment. For the injuries sustained by him, the injured/claimant has filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, on the side of the injured/claimant, the injured/claimant examined himself as P.W.1 and Doctor was examined as P.W.2 and documents Exs.P.1 to P.21 were marked. On behalf of the insurance company, one Mr.Pichamuthu, Assistant Manager of National Insurance Company was examined as R.W.1 and documents Exs.R.1 to R.3 were marked.

4. Before the Tribunal, the appellant/insurance company has taken a stand that at the time of the accident, the driver of the two wheeler does not have any valid license and the same amounts to violation of policy condition and hence, the appellant/insurance company is not liable to pay compensation to the injured/claimant.

5. The Tribunal, after considering both oral and documentary evidence adduced on either side, has held that the insurance company does not prove that at the time of the accident, the driver of the two wheeler has not possessed any valid license in the manner known to law and accordingly, rejected the claim and held that the insurance company is jointly and severally liable to pay compensation along with the owner of the two wheeler and awarded a sum of Rs.1,48,500/- together with interest at 7.5% per annum from the date of the claim petition till the date of deposit. As against the said award passed by the Motor Accident Claims Tribunal, (Subordinate Judge), Neyveli, the Insurance Company has filed this appeal before this Court.

6. Heard Mr.S.Vadivel, learned counsel appearing for the appellant/insurance company, Mr.A.Arasu Ganesan, learned counsel appearing for the first respondent/claimant and Mr.B.Suresh, learned counsel appearing for the second respondent and perused

the records.

7. After going through the award passed by the Tribunal, the compensation amount of Rs.1,48,500/- does not appears to be excessive and hence, the quantum of compensation as fixed by the Tribunal is hereby confirmed.

8. On the point of liability, the learned counsel appearing for the appellant/insurance company would contend that the insurance company has taken effective steps by sending lawyer notice to the owner of the vehicle as well as to the driver for producing the driving license. However, they have not come forward to produce the same. It is to be stated that the burden of discharge regarding the possession of valid and effective license by the driver of the offending vehicle at the time of the accident lies upon the insurance company. However, from the exhibits issuing notice, it appears that they have not taken any effective steps to prove or discharge the burden on the shoulder of the insurance company and hence, the Tribunal appears to have held that the insurance company does not discharge the burden in view of the non adducing of any positive evidence to substantiate their plea and accordingly, held that the insurance company is jointly and severally liable to pay compensation along with the owner of the two wheeler and the said finding of the Tribunal is well considered and well merited and accordingly, the civil miscellaneous appeal is liable to be dismissed.

9. It appears from the lower Court records that the Tribunal has rendered a finding as if that the driver of the two wheeler is having valid license without any positive evidence. However, it is hereby clarified that since the burden is upon the insurance company having failed to prove that the driver does not possess any valid license in the manner known to law, the finding of the Tribunal that the insurance company is jointly and severally liable to pay compensation along with the owner of the two wheeler is hereby confirmed, on the different reasonings as stated supra.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 31.03.2011 passed by the Motor Accidents Claims Tribunal, Subordinate Court, Neyveli, in M.C.O.P.No.22 of 2010, is confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

11. If the award amount with accrued interest has not been deposited, the appellant-Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.22 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Neyveli, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent/claimant is permitted to withdraw the same.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

Jr1

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Neyveli.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Vadivel, Advocate SR.No.18387

C.M.A.No.3176 of 2011

MP(CO)
GMY(08/06/2019)

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