

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.10.2019
CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.866 of 2012
and
M.P.No.1 of 2012

Branch Manager,
The Oriental Insurance Co. Ltd.,
Siddha Veerappa Chetty Street,
Dharmapuri Town.

... Appellant

vs.

1.Marimuthu
2.Rajadurai

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 13.09.2011 made in MACTOP.No.834 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Dharmapuri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.V.Kumaravelan for R1
No Appearance for R2

J U D G M E N T

The appellant / Oriental Insurance Company Ltd., is the second respondent in M.A.C.T.O.P.No.834 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Dharmapuri.

2. 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 07.12.2008.

3. The case of the claimant as follows:

On 07.12.2008 the claimant was riding a Motor Cycle bearing Registration No.TN-29-AZ-3164 and he was proceeding towards Dharmapuri, and at about 15.30 hours, another speeding motor cycle bearing Registration No. TN-29-AY-3342 which came on the opposite direction hit the claimant's motor cycle, as a result of which, the claimant fell down and sustained grievous injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the motor cycle belonging to the 1st respondent was the cause for the accident and that since the said vehicle was insured with the present appellant, the 1st respondent and the Insurance Company are jointly and severally liable to pay compensation.

4. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Dharmapuri, while awarding compensation of Rs.84,000/- together with interest at the rate of 7.5% per annum to the claimant, also concluded that the 1st respondent/owner of the two wheeler bearing Registration No. TN-29-AY-3342 and the Oriental Insurance Company are jointly and severally liable to pay compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Mr.V.Kumaravelan, learned counsel appearing for the 1st respondent.

6. The learned counsel for the appellant/Insurance Company contended that the rider of the motor cycle bearing Registration No.29-AY-3342 was not in possession of a valid driving licence on the date of accident, the Tribunal did not give the liberty to the Insurance Company to recover the award amount from the owner of the motor cycle.

7. No appearance for the 2nd respondent/owner of the motor cycle.

8. A perusal of the records shows that the Insurance Company issued notice to the owner and rider of the offending motor cycle to produce the driving licence and in spite of receipt of the said notice, the 2nd respondent/owner of the vehicle did not produce the driving licence and also remained absent before the Tribunal and was set exparte.

9. In the decisions in (i) New India 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, reported in 2018 (2) TN MAC 151 (SC), 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).

10. 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 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 motor cycle bearing Registration No. TN-29-AY-3342.

11. 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.

12. 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 / Oriental Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.84,000/- (less the amount already deposited if any) 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 M.C.O.P.No.834 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Dharmapuri, within a period of four weeks from the date of receipt of a copy of this judgment and then recover the same from the 2nd respondent/owner of the Motor Cycle bearing TN-29-AY-3342 on the same cause of action.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn
To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Dharmapuri.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+lcc to Mr.V.Kumaravelan , Advocate SR.No. 916001

+lcc to Mr.M.Krishnamoorthy , Advocate SR.No. 90297

C.M.A.No.866 of 2012

and

M.P.No.1 of 2012

A.SK(20/07/2020)

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