

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.870 of 2013  
and M.P.No.1 of 2013

IFFCO-TOKIO General Insurance  
Company Limited,  
Ground Floor, Sahas Embassy,  
No.145/131, Nelson Manickam Road,  
Mehta Nagar, Chennai.

... Appellant/2<sup>nd</sup> Respondent  
...Vs...

1.Ravi  
2.A.Natarajan

... Respondents/Petitioner & 1<sup>st</sup> Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12.01.2012 in M.C.O.P.No.404 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Villupuram.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : V.S.Sivasundaram for R2

No Appearance : R1

JUDGMENT

The appellant is the IFFCO-TOKIO General Insurance Company Limited, Chennai. The first respondent/claimant filed a claim petition in M.C.O.P.No.404 of 2007 on the file of the II Additional Subordinate Judge, Villupuram, seeking a compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 30.04.2007.

2.The brief case of the first respondent/claimant is as follows:

On 30.04.2007, at about 05.00 p.m., when the first respondent/claimant was traveling as a pillion rider in a motor cycle bearing Registration No. PY 01 E 2074 driven by his one friend named Elumalai, at that time, a speeding Minidor auto rickshaw bearing Registration No. TN 32 S 7940 belonging to the second respondent, hit the claimant Right knee.

3. According to the first respondent/claimant, the rash and negligent driving of the driver of the Minidor auto rickshaw bearing Registration No. TN 32 S 7940 belonging to the second respondent was the cause of the accident and that since the owner of the said Minidor auto rickshaw insured with the present appellant, both of them are jointly and severally liable to pay compensation. It is also contended by him that he was a driver, earning a sum of Rs.5,000/- per month.

4. The owner of the Minidor auto rickshaw remained absent before the Tribunal and therefore, he was set ex-parte. The IFFCO-TOKIO General Insurance Company Limited, Chennai the present appellant contested the above said claim petition by filing a counter.

5. The III Additional Subordinate Judge, Villupuram after analysing the evidence on record, awarded a compensation of Rs.1,75,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the IFFCO-TOKIO General Insurance Company Limited, Chennai has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Mr. N. Vijayaraghavan, learned counsel for the appellant contended that in the instant case the driver of the Minidor auto rickshaw bearing Registration No. TN 32 S 7940 was not in possession of a valid batch on the date of the accident, there is a policy violation and therefore, the appellant Insurance Company after paying the compensation amount to the first respondent/claimant, can recover the same from the owner of the Minidor auto rickshaw bearing Registration No. TN 32 S 7940 in the same proceedings. He also relied on the decision in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been held thus:

"23. The transport vehicle or omnibus would be light motor vehicle gross vehicle weight of which, and also a motor car or tractor or road roller, unladen weight of which, does not exceed 7,500 kg and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle."

7. Mr. V. S. Sivasundaram, learned counsel appearing for the second respondent herein, submitted that the Tribunal has fairly considered all the aspects and fixed the liability on both the owner of the Minidor auto rickshaw bearing Registration No. TN 32 S 7940 and the present appellant and therefore, the orders passed by the tribunal is perfectly in order. Hence, it does not

require any interference at this juncture. As far as the quantum of compensation is concerned, he submitted that the tribunal has awarded a just and fair compensation. Therefore, he pleaded no interference is required in this regard.

8. In view of the decision laid down by the Hon'ble Supreme Court in Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC) (cited supra), it is clear that no separate endorsement is required to drive the Minidor auto rickshaw bearing Registration No. TN 32 S 7940. Therefore, there is no need to interfere with the orders passed by the tribunal.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is dismissed.

(ii) The orders passed by the tribunal in MCOP.Nos.404 of 2007 is upheld.

(iii) The Insurance Company is directed to deposit the entire amount awarded by the tribunal equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

s/d-  
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

vr

To

1. Motor Accidents Claims Tribunal,  
The II Additional Subordinate Court,  
Villupuram.

2. The Section officer  
VR Section, High Court, Madras 104. (2 copies)

+1 CC to Mr. V.S. Sivasundaram, Advocate sr 14204

+1 CC to Mr. V. Vijayaraghavan, Advocate sr 14042.

C.M.A.No.870 of 2013

SR (CO)

SP (09/05/2019)