

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 4771 of 2019

Venkatesan

.. Appellant/Claimant

Vs.

1.E. Moorthy

2.The Manager,
Sriram General Insurance Co. Ltd.,
No. 66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai 17. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.02.2014, made in M.C.O.P.No. 6 of 2012, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

For Appellant : Mr. R. Prabakar

For Respondents: Mr. S. Dhakshnamoorthy (For R2)

J U D G M E N T

This appeal has been filed against the compensation granted by the award dated 05.02.2014, made in M.C.O.P.No. 6 of 2012, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur.

2.The appellant is the claimant in M.C.O.P.No. 6 of 2012, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Tiruvallur. He filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.05.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and dismissed the claim petition as against the 2nd respondent-Insurance Company. Further, the Tribunal directed the 1st respondent to pay a sum of Rs.1,41,100/- as compensation to the appellant.

4.Against the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company from its liability by the award dated 05.02.2014, made in M.C.O.P.No. 6 of 2012 and not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.Though the appellant has raised various grounds questioning liability not fixed on the 2nd respondent-Insurance Company and for enhancement of the compensation awarded, when the matter is taken up for hearing, the learned counsel appearing for the appellant has made an endorsement stating that he is not seeking any enhancement of the award amount and prayed for ordering pay and recovery alone. He further contended that the Tribunal erroneously dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that the driver of the offending vehicle was not possessing driving license. For non-possession of valid driving license, which is the breach of policy condition by the owner of the vehicle, the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation and recover the same from the owner of the vehicle and prayed for ordering pay and recovery.

6.Learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal having found that the driver of the Lorry belonging to the 1st respondent did not possess valid driving license, rightly dismissed the claim petition as against the 2nd respondent and directed the 1st respondent, owner of the vehicle to pay the compensation. The same is not erroneous and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the Tribunal dismissed the claim petition against the 2nd respondent only on the ground that the driver of the Lorry did not possess driving licence at the time of accident. The said reasoning for dismissal of the claim petition against the 2nd respondent is erroneous. It is well settled that if the driver of the two wheeler or driver of the four wheeler of the offending vehicle did not possess driving licence at the time of accident, the Insurance Company cannot be exonerated. The Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

9. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company, on the ground that the driver of the Lorry belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation amount of Rs.1,41,100/- to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is hereby modified setting aside the portion of award exonerating 2nd respondent and the compensation amount of Rs.1,41,100/- awarded by the Tribunal is confirmed. The 2nd respondent-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the

appellant/claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1.The I Additional District Judge,FAC
(Motor Accident Claims Tribunal),
Tiruvallur.

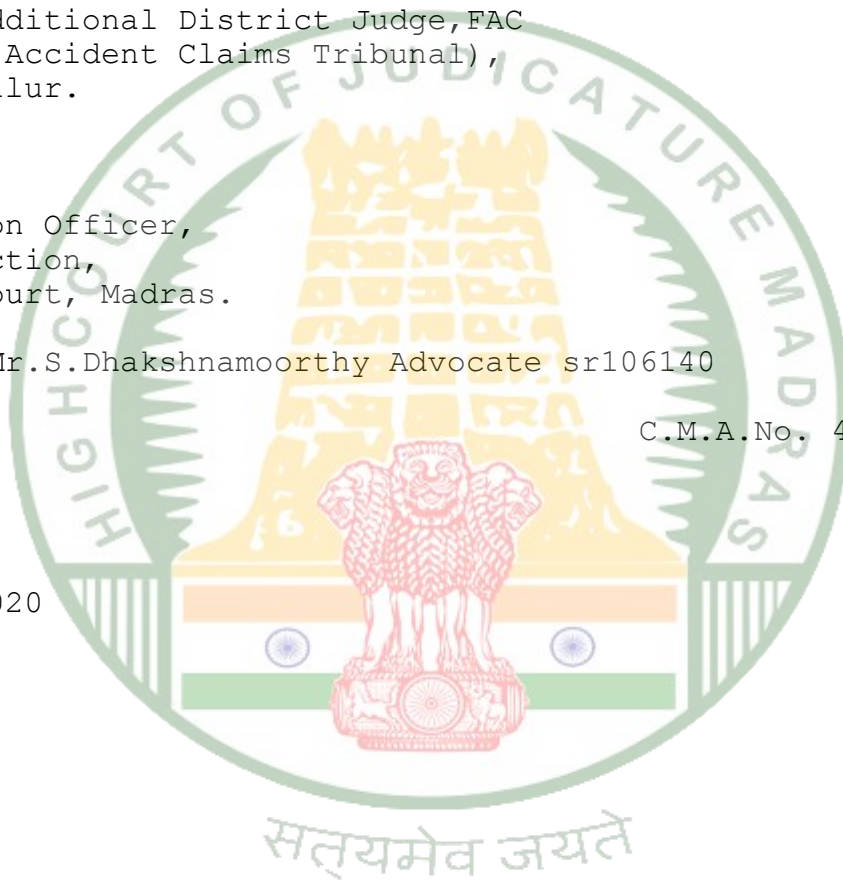
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The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.S.Dhakshnamoorthy Advocate sr106140

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