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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1427 of 2015

and

M.P.No.1 of 2015

M/s.United India Insurance Co. Ltd.,
Motor Third Party Claim Office,
South India Co-op. Building,
III Floor, 38, Anna Salai,
Chennai.

....Appellant

Vs

1.Ravishankar
2.Babu

3.The Director General of Police,
Mylapore, Chennai-4.

4.The Commissioner of Police,
General Chennai, Vepary,
Chennai-8.

5.The Director of Medical and Rural Health Services,
DMS Campus, Anna Salai, Teynampet,
Chennai-6.

(RR3 to 5 Suo Motu impleaded vide order of
Court dated 06.03.2020 made in CMA No.1427/2015 (SMSJ))

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and decree dated
05.08.2010 made in M.A.C.T.O.P.No.1424 of 2004 on the file of
the Motor Accidents Claims Tribunal, V Small Causes Court,
Chennai.

For Appellant : M/s.R.Rathna Thara
For Respondents : No Appearance for R1 and R2

Mr.Hari Arumugam for R3, R4
Government Advocate
Mr.Y.T.Aravind Gosh for R5
Government Advocate (CS)



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(iv) How many cases ended with an order of conviction and how many cases ended with an order of acquittal for the last five years in the cases of drunk and driving?

(v) Whether the Government Hospitals are maintaining Register regarding drunk and driving cases as informed by the Police Officials?

(vi) Whether the Registers are maintained regarding the Laboratory Tests conducted by the Hospitals in the cases of drunk and driving?

(vii) Whether the details and particulars provided by the Police Officials are available in the Hospitals for verification and for the purpose of effective prosecution before the Court of law?

(viii) All other connected and relevant informations and particulars in connection with the cases of drunk and driving with reference to the provisions of the Motor Vehicles Act and Motor Vehicles Rules."

6. Pursuant to the direction, the fourth respondent/the Director General of Police as well as the sixth respondent/the Director of Medical and Rural Health Services, have provided the data to show how effective the Motor Vehicles Act viz., Section 185 of the Motor Vehicles Act is implemented. The statistics of drunken driven cases year wise provided in the status report filed by the Director General of Police, Tamilnadu, reflects the following state of affair:

DETAILS OF DRUNKEN DRIVEN CASES YEAR WISE							
Year	No. of Drunken driven cases filed	Convicted		Acquittal	PT	UI	AD
		Imprisonment	Fined				
2015	219182	0	203290	974	3634	15	11269
2016	227939	0	208783	116	6997	10	12033
2017	301664	0	277299	689	8171	48	15457
2018	228754	16	207716	745	8529	27	11721
2019	227257	19	186342	188	36456	598	3654
2020 (upto 29.02. 2020)	41293	7	19409	36	20960	812	69
TOTAL	1246089	42	1102839	2748	84747	1510	54203



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7. The response of D.M.R.H.S indicates that whenever the drunken driven cases are brought for treatment to the hospital, blood samples and urine test for the presence of alcohol is taken only on the consent of the individual.

8. Now reverting back to the merits of the appeal, this Court finds that despite the clear evidence that the Auto Driver, who had caused the accident was in drunken state, the Tribunal has fixed the liability on the Insurance Company, for the simple reason that the police charged him only for rash and negligence and not for drunk and driving.

9. The Tribunal cannot be oblivious of the fact that negligence is cause for the accident and drunkenness has aggravated the degree of negligence. When fixing the tortious liability, the material collected by the police during the course of investigation can be one of the factor and not the only factor to decide negligence. When there is material to prove that the offending vehicle driver or the victim was negligent due to his drunken state that factor should always be taken note of for fixing the negligence and quantum of compensation. If the Motor Accident Tribunal fails to take notice of the drunkenness of the claimant or the offender, it will only be giving premium for rash and negligent behaviour of a drunkard who recklessly move on the motorable road. Because of the failure of the police who did not charge the offender for drunk and driving, it is not a presumption that he was not drunk, while driving the vehicle and causing the accident. The doctor has examined him immediately after the accident and had certified that the driver was drunken. This fact is not to ignored.

10. It is also brought to the notice of this Court that if only the presence of 0.03ml of alcohol per 100ml blood is found in the sample, the individual is held to be in the drunken state and if the presence of alcohol is below 0.03 ml, according to the Indian Standard, he is not a drunken person. So it appears that inspite of evidence that the second respondent in this case/the owner cum driver of Auto was in drunken state and caused the accident, the Insurance Company is now fastened with liability to pay the entire compensation to the first respondent/ injured claimant.

11. From the statistic and report furnished by the respondents 4 to 6, certain corrective measures in the approach of the Law Enforcing Authority as well as the Tribunal is required. This Court suggest that the traffic police wing whenever they come across drunk and driving, the law shall be strictly enforced and before releasing the offender or the



vehicle, the party should be put to alcohol test, whether they consent or not and the same shall be furnished to the Court along with the F.I.R or atleast at the time before filing the final report/charge sheet. In case, if the matter ends without investigation, the alcohol analyst test shall be made available to the Insurance Company or any party concerned, who agitate their right before the Motor Accidents Tribunal. Similarly, the Motor Accident Tribunal, which deals with the motor accident claim petitions, whenever evidence is produced to substantiate that the injured or the tortfeasor had committed the accident due to his drunkenness, the same has to be taken note, while deciding the liability and quantum.

12. As far as the merits of this case is concerned, this Court finds that for the fracture of left metacarpal bone, dislocation of type III acro clavicle and injury over right eyebrow, the Tribunal has awarded Rs.84,500/- payable by the Insurance company.

13. Having found that the vehicle has been insured under the second respondent, who is the appellant herein, direction has been given to the second respondent to pay the compensation amount of Rs.84,500/- with 7.5% interest from the date of numbering the application till the date of deposit. Since the insured vehicle owner cum driver, is the tortfeasor of the accident and he had caused the accident in a drunken state, he is liable to pay 50% of compensation fixed. The Insurance Company therefore is directed to pay the compensation awarded by the Tribunal and permitted to recover 50% of it from the vehicle owner.

14. This Court is of the view that to deter violations, the Tribunal should take serious note of accidents caused by the motor road users while driving their vehicle in drunken state and substantially reduce the compensation by fixing contribution on tortfeasor. Unless such deterrent measure apart from prosecution is followed, roads will not be safe for the general public.

15. With the above observations and directions, the Civil Miscellaneous Appeal is disposed of. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar



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To

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1.The Judge,
Motor Accidents Claims Tribunal,
V Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras-104.

+1cc to the Government Pleader, S.R.No.40549

CMA No.1427 of 2015

SPD(CO)
CB(03/09/2021)