

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1674 of 2013

Jaferullaha

...Appellant/Petitioner

vs.

1.Adhikesavan

2.The Manager,
The New India Assurance Company Limited,
No.1, Officer's Line,
Vellore. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to modify the judgment and decree dated 10.02.2009 and made in M.A.C.T.O.P.No.218 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore and allow the appeal.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.M.Krishnamoorthy
for R2
R1 - unknown

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant challenging the Award dated 10.02.2009, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Vellore) in M.A.C.T.O.P.No.218 of 2007.

2. The appellant / claimant has challenged the Award on the ground that the Tribunal has erroneously exonerated the second respondent / Insurance Company from any liability. The Tribunal under the impugned Award after having exonerated the second respondent / Insurance Company from any liability has directed the first respondent (owner of the vehicle) to pay the appellant a compensation of Rs.89,500/- together interest with cost as detailed hereunder:

Disability and loss of future income-	Rs.76,500/-
Pain and sufferings	- Rs. 7,000/-
Transport Charges	- Rs. 4,000/-
Extra nourishments	- Rs. 2,000/-
Total	- <u>Rs.89,500/-</u>

3. Before the Tribunal, the appellant has filed eight documents, which were marked as Exs.P1 to P8 and two witnesses were examined on his side namely the appellant himself as PW1 and the Doctor, who examined him as PW2. On the side of the respondents, two documents were filed namely Ex.R1 and Ex.R2 and one witness was examined (RW1).

4. Before the Tribunal, the certified copy of the judgment passed by a Criminal Court has been marked as Ex.P6, which would reveal that the driver of the insured vehicle was not possessing a driving license at the time of accident. However, the Tribunal has erroneously exonerated the second respondent / Insurance Company absolutely. It is settled law that when a Driver of an insured vehicle does not possess a driving license at the time of accident, the insurance company has to necessarily pay the compensation amount as assessed by the Tribunal and recover the same from the insured. However, under the impugned Award, no pay and recovery rights has been granted against the second respondent/Insurance Company. Therefore, the grounds raised by the appellant in this appeal that the Tribunal has erroneously exonerated the second respondent/Insurance Company absolutely from any liability deserves merit and has to be accepted by this Court.

5. For the foregoing reasons, this Appeal is allowed by awarding pay and recovery rights against the second respondent. The second respondent is directed to deposit the entire Award amount as assessed by the Tribunal under the impugned Award together with interest and cost to the credit of the Tribunal in M.A.C.T.O.P.No.218 of 2007, within a period of four weeks from the date of receipt of a copy of this judgment and on such deposit they are permitted to recover the said amount from the first respondent (Insured) by filing Execution Petition before the same Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pns
To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Vellore.

Copy to

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.C.Prabakaran, Advocate Sr.27975

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pvs[co]
srg 10/02/2021



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