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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2351 of 2012

and

M.P.No.1 of 2012

The Oriental Insurance Co. Ltd.,  
No.173, J.N.Road,  
Opposite to I.R.N.Kalyana Mandapam,  
Tiruvallur. ... Appellant/2nd Respondent

Vs.

1. Baskar ...1st Respondent/Claimant
2. Kannappan ...2nd Respondent/1st Respondent

(The 2<sup>nd</sup> respondent remained exparte  
and notice dispensed with for him)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 28.11.2011 made in M.A.C.T.O.P.No.889 of 2009 on the file of the Motor Accidents Claims Tribunal (Fast Track Court 2), Poonamallee.

For Appellant : M.Krishnamoorthy

For R1 : Mrs.A.Salomi

R2 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.11.2011 made in M.A.C.T.O.P.No.889 of 2009 on the file of the Motor Accidents Claims Tribunal (Fast Track Court 2), Poonamallee.



2. The case of the appellant is that on 28.01.2007 at about 10.35 p.m., while the first respondent was riding the second respondent's Motorcycle bearing Registration No.TN-07-AC-3817 near Royal Usman Hostel from West to East direction, met with an accident. Due to the impact, he sustained multiple grievous injuries all over the body, hence he was immediately he was admitted in a Hospital. At the time of accident, he was aged 27 years, and before the accident, he was running his own Public Telephone Booth and was earning Rs.6,000/- per month. Due to the injuries sustained in the accident, he became disabled, hence he filed a petition before the Motor Accidents Claims Tribunal (Fast Track Court 2), Poonamallee, claiming Rs.7,00,000/- as compensation from the second respondent and the appellant as they are the owner and insurer of the vehicle involved in the accident.

3. Denying the allegations, the appellant filed a counter affidavit before the Tribunal stating that at the time of accident, the first respondent had consumed alcohol and therefore the accident had occurred. Further, it has been stated that the second respondent's vehicle has no insurance, hence they are not liable to pay any compensation to the first respondent. Moreover, it has been stated that the alleged age, income, occupation and disability are totally false and the amount of compensation claimed is exorbitant.

4. During the trial, on the side of the first respondent, he himself was examined as PW1, one Dr.Subramanian was examined as PW2 and Exs.P1 to P10 were marked. On the side of the appellant and the second respondent, one Tmt.Jeyanthi was examined as RW1 and Exs.R1 & R2 were marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded Rs.2,27,664/- as compensation as follows :

| S.No. | Description        | Amount |
|-------|--------------------|--------|
| 1.    | Partial Disability | 80,000 |
| 2.    | Pain and Suffering | 20,000 |
| 3.    | Transport Charges  | 10,000 |
| 4.    | Extra Nourishment  | 10,000 |
| 5.    | Attender Charges   | 10,000 |
| 6.    | Medical Expenses   | 87,664 |



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| S.No. | Description    | Amount   |
|-------|----------------|----------|
| 7.    | Loss of Income | 10,000   |
|       | Total          | 2,27,664 |

6. Aggrieved by the award, the appellant has filed this appeal before this Court submitting that the Tribunal has erred in awarding the said compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

8. On perusal of the award dated 28.11.2011 passed by the Motor Accidents Claims Tribunal (Fast Track Court 2), Poonamallee, it is observed that the appellant has contended that if the accident was caused by the insured person, he can file a petition under this Section, but the first respondent is not a insured person, and as per the policy, only the second respondent is the insured person, and also the first respondent had not received any permission letter from the second respondent to drive the alleged vehicle and therefore they are not liable to pay any compensation to him. In support of their contention, the appellant has marked the Policy copy as Ex.R1. On the other hand, the first respondent has contended that only after getting permission from the second respondent, he took his vehicle, and has also brought to the notice of the Court below the Judgment reported in [2009] ACD J 2853, wherein, it has been stated as follows :

"Motor Vehicles Act, 1988 Section 147(1) - Motor Insurance - Comprehensive Policy - Private vehicle - Death of motorbike rider - Liability of insurance company - insurance company seeks to avoid its liability on the plea that rider of motor bike is not a third party - Driver other than insured is specifically covered by the policy subject to the condition that he was driving the vehicle on being engaged by the insured or with his consent - Whether insurance company is liable:--Held: Yes; insurance company had not proved that of the insured."

The Tribunal only after perusing the above Judgment has come to the conclusion that the appellant is liable to compensate the first respondent/claimant as he had taken the alleged vehicle with the consent of the second respondent.



9. As far as the quantum of compensation is concerned, this Court is found that the sum of Rs.10,000/- each awarded under the heads of Transport and Extra Nourishment is excessive, and therefore, that alone is modified as Rs.5,000/- each. The remaining sum awarded under the other heads i.e. Rs.80,000/- for Partial Disability, Rs.20,000/- for Pain & Suffering, Rs.10,000/- for Attender Charges, Rs.87,664/- for Medical Expenses and Rs.10,000/- for Loss of Income, is reasonably awarded by the Tribunal and therefore they need not be interfered with.

10. Accordingly, the sum of Rs.2,27,664/- awarded by the Tribunal is reduced at Rs.2,17,664/-. The appellant insurance company is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar

/true copy/  
Sub Asst. Registrar

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To

1. The Motor Accidents Claims Tribunal,  
Fast Track Court No.2, Poonamallee.

2. The Section Officer,  
VR Section, High Court, Madras.



+1 cc to Mr.M.Krishnamoorthy Advocate sr9434  
+1 cc to M/s.A.Salomi Advocate sr9226

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