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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3311 of 2013

and

M.P.No.1 of 2013

National Insurance Company Limited,
62, T.S.R. Big Street,
Kumbakonam, Tanjore District.

.. Appellant

Vs.

1.Anbalzhgan

2.Ganesan

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.04.2013 made in M.C.O.P.No.331 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.K.Balu

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 16.04.2013 made in M.C.O.P.No.331 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur.

3.The appellant is the 2nd respondent in M.C.O.P.No.331 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur. The 1st respondent 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 08.07.2010.

4.According to the 1st respondent, on 08.07.2010 at about 09.20 P.M., while he was walking from East to West on the extreme left side of Jayangondam - Kumbakonam Main road at

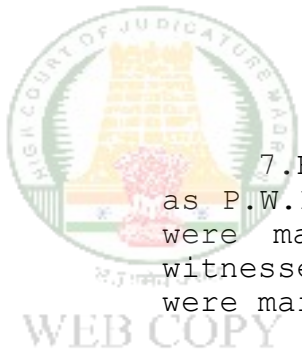


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Gangaikondacholapuram Main Road, the driver of the car belonging to the 2nd respondent bearing Registration No.TN 46 D 8384 drove the vehicle from the opposite direction in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to Government Hospita, Mayiladuthurai for medical treatment. Thereafter, he was referred to a Private Hospital for further treatment. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the car respectively.

5.The 2nd respondent, being the owner of the car remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the car belonging to the 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident has not occurred as alleged by the 1st respondent and the appellant denied the manner of accident. At the time of accident, while the driver of the 2nd respondent's car was driving the car in careful manner from West to East, the 1st respondent attempted to cross the road from North to South without minding the oncoming vehicle. On seeing the negligent act of the 1st respondent, the driver of the 2nd respondent's car blew horn and switched 'on' and switched 'off' the lights and further, he applied brake and swerved to the extreme right side and stopped the car to avoid the accident. Inspite of best efforts taken by the driver of the 2nd respondent's car, the 1st respondent dashed against the 2nd respondent's car and invited the accident. Hence, the driver of the 2nd respondent's car is not responsible for the accident. F.I.R. is registered without proper investigation. The 1st respondent contributed negligence to the accident and the Tribunal ought to have fixed negligence on the part of the 1st respondent. Further, the driver of the car belonging to 2nd respondent was not possessing valid driving license at the time of accident and also the 2nd respondent has not intimated the appellant about the change of ownership. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove that the car belonging to 2nd respondent was insured with the appellant and also the 2nd respondent's car was having valid permit at the time of accident. The appellant denied the age, avocation, income, nature of injuries and period of treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.



7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr. Saravanan was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. On behalf of appellant, two witnesses were examined as R.W.1 and R.W.2 and five documents were marked as Exs.R1 to R5.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to 2nd respondent and directed the appellant to pay a sum of Rs.1,10,000/- as compensation to the 1st respondent.

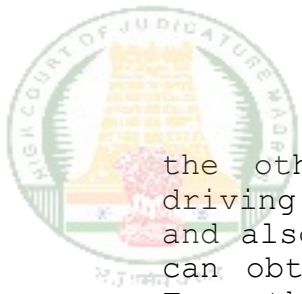
9. Against the said award dated 16.04.2013 made in M.C.O.P.No.331 of 2012, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the driver of the offending vehicle was not possessing driving license at the time of accident. The 2nd respondent permitted the driver to drive the vehicle without driving license contrary to the policy conditions and violation of permit conditions issued by the appellant. The appellant discharged its burden by examining R.W.1, R.W.2 and marking Exs.R1 to R5. The Tribunal failed to properly appreciate the evidence of R.W.1 & R.W.2 and documents Exs.R1 to R5. The reason given by the Tribunal for rejecting the evidence let in by the appellant are unsustainable and prayed for allowing the appeal.

11. The learned counsel appearing for the 1st respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials available on record, it is seen that the contention of the appellant is that the driver of the car belonging to 2nd respondent did not possess driving license at the time of accident. The 2nd respondent permitted the driver to drive the vehicle without driving license and breached the terms and conditions of policy. To substantiate this, the appellant examined R.W.1, R.W.2 and marked five documents as Exs.R1 to R5. From the evidence of R.W.1, it is seen that R.W.1 has produced Ex.R1/Accident Inspection Report and Ex.R2/Motor Vehicle Inspector Report and deposed that based on Motor Vehicle Inspector's report, the driver of the 2nd respondent's vehicle did not possess driving license. R.W.1 did not depose that he verified the records in their office and there is no record to show that license was issued to the driver of the vehicle. On



the other hand, he has deposed that Police after obtaining driving license from the driver, may not send the same to them and also deposed that on producing Voter Identity Card, a person can obtain driving license from any Regional Transport Office. From the award of the Tribunal, it is seen that the Tribunal considering the evidence of R.W.2, held that 2nd respondent's vehicle was retained by R.T.O. for not producing license but appellant has not established that vehicle is still kept in R.T.O. or whether it was released. The Tribunal considered the evidence of R.W.1, R.W.2 and documents filed by the appellant and held that it cannot be held that driver of the vehicle did not possess driving license at the time of accident. There is no error in the finding of the Tribunal warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,10,000/- awarded by the Tribunal alongwith interest @ 7.5% per annum, as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.331 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Ariyalur. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court,
Ariyalur.



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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.42382

+1cc to Mr.K.Balu, Advocate SR.No.42348

C.M.A.No.3311 of 2013

RGN (CO)
GMY (02/09/2021)