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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.481 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
The United India Insurance Company Limited,
V Floor, Rohit Chambers,
Jenma Boomi Marg,
Mumbai - 400 001.

... Appellant/2nd Respondent

Vs.

1.S.Venkatasamy

2.N.Ganapathy ... Respondents/Petitioner/1st Respondent
(R2 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.04.2011 made in M.C.O.P.No.222 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

For Appellant : Mr.J.Chandran

For R1 : Mr.V.R.Annagandhi

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 06.04.2011 made in M.C.O.P.No.222 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

3.The appellant is the 2nd respondent in M.C.O.P.No.222 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. The 1st respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.03.2007.



4. According to the 1st respondent, on 05.03.2007 at about 08.20 P.M., while he was proceeding on the Palacode - Bangalore road near Dharmapuri District Co-operative Sugar Mill Limited, Palacode, the driver of the vehicle bearing Registration No.TN 33 AE 7494 driving the vehicle to Bangalore from Palacode on Palacode - Bangalore road, drove the same in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over his body. Immediately after the accident, he was taken to Government Hospital, Palacode and thereafter he was referred to Chief Government Hospital, Dharmapuri for medical treatment. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the vehicle.

5. The 2nd respondent, being the owner of the vehicle bearing Registration No.TN 33 AE 7494 remained exparte before the Tribunal.

6. The appellant-Insurance Company, being the insurer of the vehicle bearing Registration No.TN 33 AE 7494 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 2nd respondent's vehicle was not involved in the accident. The appellant denied the manner of accident and the nature of injuries sustained by the 1st respondent in the accident. The 2nd respondent's vehicle was not insured with the appellant at the time of accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The 1st respondent has to prove that the 2nd respondent's vehicle was insured with the appellant and the driver of the 2nd respondent's vehicle was possessing valid driving license at the time of accident. The accident has not occurred due to negligence on the part of the driver of the 2nd respondent's vehicle and the 1st respondent has to prove that the driver of the 2nd respondent's vehicle was driving the vehicle in a rash and negligent manner. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and 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.



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7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.S.Krishnakumar was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. On behalf of appellant, no witnesses were examined and two documents were marked as Exs.R1 & R2.

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 vehicle belonging to 2nd respondent and directed the 2nd respondent and appellant to pay a sum of Rs.2,11,423/- as compensation to the 1st respondent.

9. Against the said award dated 06.04.2011 made in M.C.O.P.No.222 of 2009, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the defence taken by the appellant and has not framed any issue with regard to liability. The driver of the vehicle was not possessing driving license at the time of accident and he has taken driving license only subsequent to the date of accident i.e. for the period from 08.12.2009 to 07.12.2012 which was marked as Ex.R2. The 1st respondent sustained only simple injuries. If he had sustained grievous injuries, he could have taken treatment at Bangalore Hospital, immediately after the accident. The 1st respondent would have proved the injuries sustained by him by examining Doctors from Bangalore Hospital. P.W.2/Doctor is not the Doctor who treated the 1st respondent. Hence, the 1st respondent is not entitled for any compensation and prayed for setting aside the award passed by the Tribunal.

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 it is the contention of the 1st respondent that while he was going to his work on 05.03.2007 on the Palacode - Bangalore road near Dharmapuri District Co-operative Sugar Mill Limited, Palacode, the driver of the vehicle belonging to 2nd respondent drove the same in a rash and negligent manner and dashed on the



backside of the 1st respondent and caused the accident. In the accident, the 1st respondent sustained injuries. To prove the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the vehicle belonging to the second respondent. On the other hand, it is the contention of the appellant that the vehicle belonging to 2nd respondent is not involved in the accident and the 1st respondent did not sustain any injuries in the accident. To prove the same, the appellant did not let in any oral evidence and failed to disprove the evidence of 1st respondent. The Tribunal in the absence of any contra evidence, accepted the evidence of 1st respondent as P.W.1 and documents filed and held that the 1st respondent sustained injuries in the accident caused by the driver of the vehicle belonging to 2nd respondent and appellant is liable to pay the compensation.

14.It is the further contention of the learned counsel appearing for the appellant that the driver of the vehicle belonging to 2nd respondent did not possess driving license on the date of accident, but he obtained driving license subsequent to the accident only for the period from 08.12.2009 to 07.12.2012 and marked Ex.R2/driving license of the driver Marimuthu. Ex.R1 is the ration card of 1st respondent. From the award of the Tribunal, it is seen that the appellant has not examined any official from R.T.O. to prove that driver of the vehicle belonging to 2nd respondent did not possess driving license prior to Ex.R2 and that he did not possess driving license on the date of accident. Further in the counter statement, the appellant except general denial, has stated that it is for the 1st respondent to prove that vehicle is insured with the appellant and driver had driving license at the time of accident. The appellant has not taken a specific stand that driver of the vehicle belonging to 2nd respondent did not possess driving license on the date of accident. Considering the materials produced by the appellant, it is clear that appellant failed to prove their contention that driver of the 2nd respondent's vehicle did not possess driving license on the date of accident. In view of the same, the appellant is liable to pay compensation to the 1st respondent.

15.As far as quantum of compensation is concerned, the Tribunal considering the evidence of P.W.2/Doctor, nature of injuries, period of treatment taken and documents filed by the 1st respondent, has awarded compensation under different heads which are not excessive warranting interference by this Court.

16.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,11,423/- awarded by the Tribunal alongwith interest @ 7.5% per annum, as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd



respondent as well as the appellant-Insurance Company are jointly and severally 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.222 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. 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)

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Sub Assistant Registrar

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To

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

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

+1cc to Mr.J.Chandran, Advocate Sr.42330
+1cc to Mr.V.R.AnnaGandhi, Advocate Sr.41769

C.M.A.No.481 of 2013

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srg 27/08/2021