



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.450 of 2009

and

M.P. (MD) No.1 of 2009

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National Insurance Company Ltd.,
Rep. Through its Manager
Devarpuram Road, Tuticorin

... Appellant

-vs-

1.H.Watson Thomas

2.I.Chithi

3.P.Prabhu Sheikh Dawood Jailani

4.National Insurance Company Ltd.,
through its Manager
Great Cotton Road, Tuticorin

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 02.02.2007, passed by the Motor Accident Claims Tribunal (Fast Track Court No.2), Additional District Judge, Tirunelveli, in M.C.O.P.No.1140 of 2004.

For Appellant : Ms.P.Malini

For Respondents : Mr.D.Christenson Jugunu for R1
R2 & R3 - Dismissed
R4 - Given up

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award, dated 02.02.2007, passed in M.C.O.P.No.1140 of 2004, by the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.II), Tirunelveli.

2. The first respondent herein filed the claim petition claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the motor vehicle accident took place on 12.05.2002. It

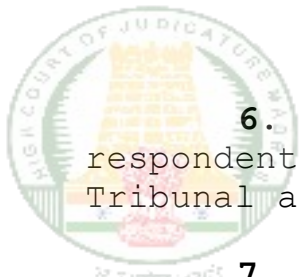


is the case of the claimant that he along with his father travelled in an Auto bearing registration No.TN69 A3142 owned by the second respondent and insured with the appellant - Insurance Company and the Auto was driven by its driver in a rash and negligent manner and hit against a Mahindra Van bearing registration No.TN69 C3048 owned by the third respondent and insured with the fourth respondent - Insurance Company, which was coming from the opposite direction. In the accident, the claimant sustained fracture and also injuries and immediately, he was admitted in Ramamurthy Hospital, Tiruchendur and after providing first aid, he was admitted in Krishnakumar Orthopedic Hospital, Nagercoil.

3. In the counter filed by the appellant - Insurance Company, the averments made in the claim petition were disputed and denied. It is specifically contended that the owner of the Auto did not intimate the accident and also submit the driving licence particulars of the driver to the Insurance Company. Hence, they issued a notice dated 31.01.2005 to the owner of the Auto / second respondent herein and also the driver of the Auto. But, they did not respond to the notice. According to the appellant - Insurance Company, the driver of the Auto has no valid and effective driving licence to drive the Auto. It is also stated that the Auto did not have the fitness certificate and it was plied without any permit.

4. During trial, the claimant examined two witnesses and marked ten documents and on the side of the appellant - Insurance Company, two witnesses were examined and marked five documents. The Tribunal, after analyzing the evidence adduced by the parties, found that the driver of the Auto was responsible for the accident and awarded compensation of Rs.1,66,000/- along with interest at the rate of 7.5% per annum.

5. Ms.P.Malini, learned counsel appearing for the appellant - Insurance Company would submit that the Tribunal failed to appreciate the evidence adduced on the side of the appellant - Insurance Company. It is the contention of the learned counsel for the appellant that there was no valid permit for the offending vehicle and the vehicle was driven by a person, who did not have valid driving licence. Despite issuance of notice to the owner as well as driver of the Auto, no licence particulars were given and the appellant - Insurance Company examined the Junior Assistant from the Regional Transport Office as R.W.1 and proved that the driver was not holding valid driving licence at the relevant time and hence, no liability can be fastened on the appellant - Insurance Company. It is also contended that the award amount is excessive and exorbitant.



6. Mr.D.Christenson Jugunu, learned counsel for the first respondent / claimant, supported the conclusion arrived at by the Tribunal and prayed for dismissal of the appeal.

7. Heard Ms.P.Malini, learned counsel for the appellant / Insurance Company and Mr.D.Christenson Jugunu, learned counsel for the first respondent / claimant and carefully perused the materials available on record.

8. In the instant case, the claimant gave evidence as P.W.1 and in his evidence, he has categorically stated that the driver of the Auto drove the vehicle in a rash and negligent manner and hit against a Mahindra Van, which was coming from the opposite direction. In support of his contentions, Ex.P1 - Copy of First Information Report and Ex.P5 - Copy of Judgment passed by the Criminal Court were marked. Exs.P1 and P5 show that the driver of the Auto was prosecuted and also paid the fine amount for his negligent driving. Since there was no material against the respondents 3 and 4, the claim petition against them was dismissed. I find no illegality in the findings of the Tribunal on the negligence aspect.

9. With regard to the quantum, the claimant would state that he was a student at the time of the accident and because of the injuries sustained by him, he could not continue his studies. It is also stated that he underwent a surgery and a plate was fixed and he is in need of another Rs.30,000/- for future medical expenses for removal of the plate. Ex.P2 is the Wound Certificate. Dr.Ramaguru, who was examined by the claimant as P.W.2, issued Ex.P9 - Disability Certificate, which shows that the claimant suffered 23% permanent disability. Ex.P6 is the Medical Bill; Ex.P7 is the Quotation for removal of the plate. Based on the above evidence, the Tribunal awarded Rs.46,000/- towards permanent disability and future loss of income; Rs.60,000/- towards medical expenses; Rs.35,000/- towards future medical expenses; Rs.15,000/- towards pain and suffering and Rs.10,000/- towards transport expenses and extra-nourishment and in total, the Tribunal awarded Rs.1,66,000/- along with interest at the rate of 7.5% per annum. In my considered opinion, the award amount is reasonable and it does not warrant any interference of this Court.

10. With regard to the liability, it is seen that the appellant - Insurance Company issued notice to the owner of the vehicle under Ex.R3, however, it was returned. As stated above, in the counter itself, they have taken a stand that the Auto was not having a valid fitness certificate and the driver was also not having valid driving licence. In order to establish the said contention, the Junior Assistant of the Regional Transport Office, Tiruchengode, was examined as R.W.1, who in his evidence, has



stated that the permit issued to the offending vehicle was cancelled on 27.09.2000 and it was not renewed thereafter, which shows that the vehicle was plied on the date of the accident without any valid permit. He would further state that since the driving licence number was not given, they were not able to trace the records. R.W.2 - employee of the appellant - Insurance Company stated that on the date of the accident, the vehicle was not having fitness certificate and permit and it was driven by an unlicensed driver. Hence, they issued notices under Exs.R3 and Ex.R4. The Tribunal having found that the vehicle had insurance coverage, when the accident had taken place on 12.05.2002, held that the appellant - Insurance Company is liable to pay the compensation, but the defence taken by them was rejected on the ground that a temporary licence would have been given to the driver of the Auto from some other Regional Transport Office and the policy was also issued without verifying the permit. In my considered opinion, the reasoning given by the Tribunal cannot be countenanced. The appellant - Insurance Company has taken all steps to prove their defence before the Tribunal, but the owner of the vehicle, who received notice, remained *ex parte* and it is for him to appear before the Court to prove that there was no violation of policy conditions, however, he failed to do so. Since, he remained *ex parte* before the Tribunal, he is not entitled for notice in this appeal in view of Order XLI Rule 14(2) of the Code of Civil Procedure.

11. The Honourable Apex Court in ***Rani and others vs National Insurance Company Limited and others [(2018) 2 TNMAC 278]***, held that even if there is violation of policy conditions, the Insurance Company has to satisfy the award amount at the first instance and thereafter, recover it from the owner of the vehicle. In this case also, the claimant is a third party and following the above cited decision, the appellant - Insurance Company shall pay the award amount to the claimant at the first instance and thereafter, recover it from the owner of the vehicle. It appears that the award is fair and reasonable.

12. In the light of the above facts, while confirming the quantum, this Court directs the appellant - Insurance Company to pay the entire award amount with accrued interest and costs to the first respondent - claimant at the first instance and then to recover the same from the owner of the vehicle. It is represented that as per the interim orders of this Court, the appellant - Insurance - Company has already deposited the entire award amount together with interest and costs to the credit of claim petition. The first respondent - claimant is permitted to withdraw the entire award amount with accrued interest and costs, less the amount already withdrawn if any, by filing necessary application



13. With the above modification, the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The Additional District Judge,
Motor Accident Claims Tribunal,
(Fast Track Court No.II), Tirunelveli.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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