



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2020

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD) No.1771 of 2010

and

M.P.(MD) No.1 of 2010

The Branch Manager

The United India Insurance Company Limited,
Branch Office II, 254, Goodshed Street,
Madurai-1.

.. Appellant/2nd Respondent
in M.C.O.P

vs.

1.Ramiah

..1st Respondent/Petitioner
in M.C.O.P

2.Satheesh Amalan

.. 2nd Respondent/1st Respondent
in M.C.O.P

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree passed in M.C.O.P.No.1224 of 2005, dated 22.07.2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Madurai.

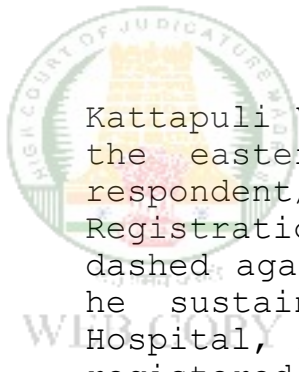
For Appellant	: Ms.Maria Rubit for Mr.G.Prabhu Rajadurai
For Respondents	: No Appearance (for R1) Dispensed with (R2)

J U D G M E N T

The appellant/2nd respondent has filed this Civil Miscellaneous Appeal against the award and ex-order, dated 22.07.2010 made in M.C.O.P.No.1224 of 2005, Motor Accident Claims Tribunal, II Additional Sub Court, Madurai.

2.The first respondent/claimant filed a claim petition, claiming an amount of Rs.2,00,000/- (Rupees Two Lakhs Only) towards compensation for the injuries sustained by him in a road accident.

3.The case of the claimant before the Tribunal is that on 18.10.2004, at about 07.15 p.m., the 1st respondent/petitioner, who was working as Watchman in Seelarani Textile Mills Limited in



Kattapuli Village was standing on the Madurai-Dindigul Main Road on the eastern portion of the mud road, at that time, the 2nd respondent/1st respondent was driving a Motor Cycle bearing Registration No.TN-58-J-0678 in a rash and negligent manner and dashed against the 1st respondent/petitioner, as a result of which, he sustained injuries and he was taken to Government Rajaji Hospital, Madurai. In respect of the occurrence, a case was also registered before the Samayanallur Police Station. The 2nd respondent/1st respondent remained ex-parte and the Insurance company, who is the appellant herein, filed counter stating that the accident took place only due to the negligence on the part of the 1st respondent/petitioner and since the 1st respondent/petitioner, in an negligent manner, crossed the road suddenly.

4.On the side of the claimant, three witnesses were examined and seven documents marked. On the side of the respondents, three witnesses were examined and one document was marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the 2nd respondent/1st respondent and with regard to the compensation, based upon the evidences, assessed the same as Rs.89,904/- with interest at 7.5% p.a., from the date of petition till the date of realization and costs of the petition.

6.Challenging the same, this appeal has been preferred by the Appellant/Insurance Company only on the ground that the rider of the two wheeler, namely, the 2nd respondent/1st respondent was not owning a proper driving licence, so, the Tribunal ought to have ordered the compensation to be paid by the appellant/Insurance Company and permit him to recover the same from the 2nd respondent/1st respondent.

7.The point for consideration is whether the pay and recovery can be ordered?

8.On behalf of the appellant, R.W.1 was examined and he has stated that as per the investigation report under Ex.R.1, the rider of the two wheeler was not having a valid driving license on the date of the accident, (ie) on 18.10.2004. The licence expired on 09.02.2003 and thereafter, it was renewed only on 07.02.2008 that too with penalty. No finding has been recorded by the Tribunal to the effect that the rider of the two wheeler was not having a proper driving license at the time of the accident. The Tribunal held that since the appellant is the insurer, they are liable to pay the amount. But from the evidence of R.W.1 and from the document produced on the side of the appellant under Ex.R.1, it is seen that the rider of the two wheeler was not valid driving licence at the time of the accident. Since it is a policy violation as per the settled position, the pay and recovery has to be ordered, since the claimant is a third party.



9.In the result, this Civil Miscellaneous Appeal is allowed. The findings rendered by the Tribunal is modified to the effect that the appellant/Insurance Company shall pay the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. Thereafter, the appellant/insurance company is permitted to recover the same from the 2nd respondent/1st respondent as per law. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

sjj

To

1.The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal), Madurai.

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

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.25589

JUDGMENT MADE IN
C.M.A (MD) No.1771 of 2010
11.12.2020

VB (21.01.2021) 3P 5C