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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.2.2021

CORAM:

THE HON'BLE Mr. JUSTICE D. KRISHNAKUMAR

Civil Miscellaneous Appeal No. 2547 of 2013

National Insurance Company Ltd.,
No. 751, Anna Salai,
Chennai - 2.

... Appellant/Insurance Company/2nd Respondent

..Vs..

1. Naina Mohammed	...	Petitioner/Respondent No.1
2. Sivakumar	...	1 st Respondent/Respondent No.2

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 11.2.2013 made in M.C.O.P.No.1880 of 2008 on the file of III Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant	:	Mr.D.Bhaskaran
For Respondent No.1	:	Mr.Mura Aurobindo Kumar for Ms.Ramya Rao
For Respondent No.2	:	No appearance

JUDGMENT

Dissatisfied with the award, dated 11.2.2013 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1880 of 2008, Insurance Company is before this Court against the liability as well as quantum of compensation.

2. The case of the claimant is that on 22.6.2006 at about 9.30 a.m., while the petitioner was riding a motorcycle bearing registration No.TN-05-D 7179 at New Avadi road, junction of Palli Arasan Street, Chennai proceeding from south to north, a motorcycle bearing registration No.TN-05-J-8148 driven by its driver in a rash and negligent manner from east to west and hit the petitioner's vehicle, thereby caused accident, resulting in the petitioner sustained grievous injuries. The rider of the motorcycle bearing registration No.TN-05-J-8148 is responsible for the accident. The first respondent as the owner and the second respondent as the Insurance company are jointly and severally liable to pay compensation. Hence, the appellant has filed a claim petition claiming compensation of Rs.2,50,000/- .



3 In the counter statement filed by the Insurance Company it is specifically stated that the claimant did not possess valid driving licence to drive the vehicle at the time of accident. Besides, the claimant did not produce the said vehicle for inspection. Charge sheet was laid under Sec.338 I.P.C. 184 of M.V. Act, 3 r/w 181, 196 and 179 of M.V. Act and the petitioner has voluntarily pleaded guilty of the offences charged and sentenced to pay a sum of Rs.2,000/-. As such, the appellant himself contributed negligence to cause accident. Therefore, the claim petition is liable to be dismissed.

4 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.11, has awarded a compensation of Rs.1,05,002/- to the petitioner. Aggrieved by the said award, the Insurance Company has preferred the present appeal mainly against the liability fixed by the tribunal.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the petitioner/first respondent and perused the materials available on record.

6. The contention of the learned counsel appearing for the appellant/Insurance Company is that the petitioner did not possess valid driving licence at the time of accident and the petitioner himself voluntarily pleaded guilty and paid a fine of Rs.2000/- before Magistrate Court. Further, Tribunal having observed the evidence of claimant, R.W.1, R.W.2 and Ex.P1, R1 to R4 that the accident occurred due to the negligence on the part of the petitioner. In such view of the matter, tort-feaser's claim is not maintainable. Therefore, the award passed by the tribunal is liable to be set aside.

7. It is brought to the notice of this Court that the Hon'ble Supreme Court in United India Insurance Co. Ltd. vs. Sunil Kumar and another [Civil Appeal No.9694 of 2013, dated 24.11.2017] in paragraph 9, has held that in a proceeding under Sec.163-A of the Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim.

8. The aforesaid judgment is squarely apply to the facts of the case in hand. The learned counsel appearing for the appellant cannot dispute the dictum laid down by the hon'ble Supreme Court. Therefore, in the light of the decision cited supra, the ground raised by the appellant/Insurance company is not sustainable. The appellant has no grievance insofar as the quantum of compensation awarded by the tribunal.

9. For the reasons stated in preceding paragraphs, this Court is of the view that the tribunal has rightly passed the award in favour of the claimant. Hence, there is no warrant to interfere with the award passed by the tribunal.



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10. In fine, the Civil Miscellaneous Appeal is dismissed.
No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal, Chennai.
2. The Section Officer, V.R.Section, Madras High Court, Chennai-104.

Civil Miscellaneous Appeal
No.2547 of 2013

KV(CO)
B.VC (02/09/2021)