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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2916 of 2014

and

M.P.No.1 of 2014

The United India Insurance Company Limited,
Vellore.

.. Appellant/2nd Respondent
Vs.

1.Anumuthu ... 1st Respondent/Petitioner

2.Nithyanantham .. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.10.2012 made in M.C.O.P.No.346 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.V.Parivallal

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 06.10.2012 made in M.C.O.P.No.346 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur.

2.The appellant is the 2nd respondent in M.C.O.P.No.346 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur. 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 21.04.2011.

3.According to 1st respondent, on 21.04.2011 at about 02.45 P.M., while he was travelling as passenger in the Share Auto bearing Registration No.TN 23 BW 3584 from Tholgate to Patchur



Main Road, near Natrampalli Tholgate, the driver of the Share Auto drove the same in a rash and negligent manner and dashed against one cyclist, who was proceeding on the extreme left side of the road and caused the accident. Due to the said impact, the 1st respondent who was travelling in the Share Auto sustained grievous injuries all over the body and fracture on his fibula. Immediately after the accident, the 1st respondent was taken to Government Hospital, Vaniyambadi for medical treatment and on the same day, he was referred to Government Vellore Medical College Hospital for further medical treatment. Thereafter, the 1st respondent has taken treatment in the Private Hospital, till filing of the claim petition. Therefore, he 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 Share Auto respectively.

4.The 2nd respondent-owner of the Share Auto remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the Share Auto filed counter statement and denied the manner of accident as alleged by the 1st respondent. According to appellant, a petitioner in M.C.O.P.No.344 of 2011, a cyclist, who suddenly crossed the road and caused the accident. Further, the driver of the Share Auto was not having valid driving license at the time of accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent and only the 2nd respondent-owner of the Share Auto is liable to pay the compensation to the 1st respondent, if any awarded by the Tribunal. The 1st respondent has to prove his age, avocation, income, nature of injuries, disability and period of treatment taken by producing valid documents. The quantum of compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition as against the appellant-Insurance Company.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.Elangovan was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. The appellant examined two witnesses as R.W.1 & R.W.2 and marked one document as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the Share Auto belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.78,000/- as compensation to the 1st respondent.

8.To set aside the said award dated 06.10.2012 made in M.C.O.P.No.346 of 2011, the appellant has come out with the



present appeal.

9. The learned counsel appearing for the appellant contended that the driver of the Share Auto was not possessing valid driving license to drive the Share Auto and the Tribunal erroneously directed the appellant-Insurance Company to pay the compensation to the 1st respondent. The Tribunal ought to have directed the 2nd respondent-owner of the Share Auto to pay the compensation to the 1st respondent. The vehicle driven by the driver of the insured is a transport vehicle and the same can be driven only by a person who holds a license to drive a transport vehicle with badge and the same cannot be driven by a person holding Learner's License. The Tribunal erred in holding that Learner's License is a valid license to drive the commercial transport vehicle without considering the fact that the transport vehicle cannot be driven without endorsement to drive a transport vehicle and a badge. The Tribunal failed to properly consider the evidence of R.W.1 & R.W.2 and contents of Ex.R1 and prayed for setting aside the award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the driver of the Share Auto was possessing Learner's License at the time of accident and the Learner's License is also a valid one for driving the transport vehicle. The driver of the Share Auto obtained driving license on 17.05.2011. The Tribunal considering the evidence of R.W.2 and entire materials on record, rightly held that the appellant is liable to pay the compensation to the 1st respondent and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

12. The present appeal is filed against the award of the Tribunal directing the appellant to pay the compensation. The appellant has raised various grounds with regard to liability. At the time of arguments, the learned counsel appearing for the appellant mainly contended that the driver of the Share Auto was not possessing valid driving license to drive the transport vehicle at the time of accident and the Tribunal erroneously directed the appellant-Insurance Company, being the insurer of the Share Auto to pay the compensation to the 1st respondent.

13. A perusal of the records filed by the parties reveals that the accident occurred on 21.04.2011 and on the date of accident, the 1st respondent was having only Learner's License which is valid from 09.03.2011 to 08.09.2011. Further, the 1st respondent has obtained driving license only on 17.05.2011. Therefore, it is clear from the records that at the time of



accident, the driver of the Share Auto belonging to 1st respondent was not possessing valid driving license and he was having only Learner's License. The Tribunal considering the same, directed the appellant-Insurance Company to pay the compensation to the 1st respondent. The Hon'ble Apex Court in the judgment reported in ACJ 2004 (Volume - I), [National Insurance Co. Ltd. Vs. Swaransingh and others], held that learner's license is a valid license. Further, as per the said judgment of the Hon'ble Apex Court, the Tribunal ought to have directed the appellant-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the Share Auto. In view of the judgment of the Hon'ble Apex Court, the portion of the award directing the appellant-Insurance Company to pay the compensation to the 1st respondent is modified directing the appellant-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the Share Auto.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.78,000/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, 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.346 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur, at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Deputy Registrar (Admn)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur.



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

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+1cc to Mr.V.Parivallal, Advocate, S.R.No.29457

C.M.A.No.2916 of 2014

RSI (CO)
GN(16/11/2021)