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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 23.03.2021
CORAM
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.1006 of 2013
and
MP(MD)No.3 of 2013

Branch Manager,
Oriental Insurance Company Limited,
TDJ Centre, 1st Floor,
Opp. Vadasery Bus Stand,
Nagercoil. : Appellant/3rd Respondent

Vs.

1.Rajapandi : 1st Respondent/Petitioner
2.Justin : 2nd Respondent
3.Ramesh : R2 and R3/R1 and R2

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli, made in MCOP No.278 of 2010, dated, 07.09.2011.

For Appellant	:	Mr.K.Bhaskaran
For R1 and R2	:	Dismissed, Vide order, dated 15.12.2017
For 3rd Respondent	:	Mr.P.Prabhakaran

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli, made in MCOP No.278 of 2010, dated, 07.09.2011.

2.The short facts of the case is that on 23.04.2010 at about 4.30 pm, the claimant was walking in the mud portion on the left side of the road and when he was nearing Suchindram Akkarai Aval Mill, a load Auto TN-74-V-3904 came behind the claimant in a rash and negligent manner and dashed against him. In that accident, the claimant sustained multiple injuries all over the body and immediately, he was taken to Asaripallam Government Hospital and initially, he took treatment inpatient for sometime and thereafter, he was taking treatment in Thiraviyam Private Hospital. A claim petition was filed by the claimant seeking compensation of Rs.5,00,000/- on the ground that the offending vehicle caused the accident.

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3.The claim was resisted by the appellant Insurance Company contending that the claim made by the claimant was excessive and that the driver of the offending vehicle was not having valid driving licence on the date of the accident.

4.Before the tribunal, on the side of the claimant, 2 witnesses were examined and marked 10 documents. On the side of the Appellant Insurance Company, 2 witnesses were examined and 3 documents were marked.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.1,32,484/- together with interest @ 7.5% p.a., by directing the appellant Insurance Company first to satisfy the award amount and thereafter, recover from the owner of the offending vehicle. Challenging the said award, the present appeal has been filed.

6.Heard both sides and perused the materials available on record.

7.The learned counsel appearing for the appellant has mainly contended that the Insurance Company had proved that the driver of the offending vehicle did not have any valid licence at all on the date of the accident and that the tribunal having accepted the above fact has wrongly fastened the liability on the Insurance Company. It is further submitted that the award of the tribunal is on the higher side.

8.The evidence of PW2 and Ex.P9 Disability Certificate would show that the claimant had suffered 50% partial permanent disability. Ex.P4 Wound Certificate corroborates the case of the claimant. Based on the evidence, the Tribunal has awarded Rs.75,000/- towards permanent disability by awarding Rs.1,500/- per percentage and also awarded Rs.15,000/- for pain and suffering, Rs.6,000/- towards loss of earning; Rs.10,000/- towards medical attendants and extra nourishment; Rs.1,000/- for damages to cloth and articles; Rs.3,000/- towards transport expenses; Rs.22,484/- towards medical bills. In total, the tribunal has awarded Rs.1,32,484/- together with interest @ 7.5% pa. In my considered view, the quantum awarded by the Tribunal is fair and reasonable and the same can be confirmed.

9.It is admitted by the appellant Insurance Company that the offending vehicle was insured with them. RW1 is the official of RTO office, who produced the licence particulars, which was marked as Ex.R1. He deposed that the 3rd respondent/driver has not obtained any valid badge on the date of the accident. The Tribunal accepting the evidence of RW1 and Ex.R1 held that the driver did not have any valid license on the date of the accident, directed the appellant Insurance Company to pay the compensation and thereafter recover

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from the owner of vehicle.

10.It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance Company has to first satisfy the award and recover the same from the owner the vehicle.

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11.In the case on hand, the Tribunal after considering the facts and circumstances of the case has rightly directed the appellant Insurance Company to pay the award amount first and then recover the same from the owner of the vehicle.

12.In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021
Sub Assistant Registrar(CS)

er
To,

1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate,
Tirunelveli.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-12926[F] dated 23/03/2021)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-13661[F] dated 25/03/2021)

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KK(02.06.2021) 3P 6C