

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAMC.M.A(MD)No.1108 of 2011

Gopalsamy

...Appellant/Petitioner

Vs.

1.N.Raji

3.The Branch Manager,
New India Assurance Company Ltd.,
77, Police Station Road,
Sivakasi - 626 123.

... Respondents/ Respondents

PRAYER:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 05.01.2009 passed in M.C.O.P.NO.44 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Sivakasi, insofar as relating to the quantum and dismissal as against the second respondent are concerned, by allowing this Civil Miscellaneous Appeal.

For Appellant	: Mrs.P.Jessi Jeeva Priya
For Respondent	: Mr.M.Asok Kumar
No.1	
For Respondent	: Mr.J.S.Murali
No.2	Standing Counsel

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award passed by the Motor Accidents Claims Tribunal (Sub Court), Sivakasi in MCOP.No.44 of 2004, dated 05.01.2009.

2.The appellant is the claimant. He filed the claim petition seeking compensation of Rs.3,00,000/-. According to him, on 04.01.2004, he was riding his bicycle on Thiruthangal - Virudhunagar main road, towards North. When he was nearing a limestone kiln, a motorcycle bearing Registration No.TN 67 R 2238, which was coming in the same direction in a rash and negligent manner, hit against the bicycle. In the impact, he was thrown away from the bicycle and he sustained fracture and injuries. He was immediately taken to Dr.Mookaiya for providing first aid and thereafter he was admitted in PAMC Hospital at Madurai. Since the accident had occurred due to the negligence of the rider of the motor cycle, the owner as well as the insurer are liable to pay compensation.

3.The 2nd respondent insurance company resisted the claim petition, disputing the manner of the accident, as stated by the claimant and also submitted that the charge sheet was filed against one Arokiaraj and he also pleaded guilty before the Criminal Court. The change of driver was done deliberately to make a false claim against the insurance company. So it is a fraudulent arrangement



made between the owner and the said Arokiaraj and the claim is also excessive.

4. Before the Tribunal, the claimant examined two witnesses and marked seven documents. On the side of the insurance company three witnesses were examined and four documents were marked. On appreciation of evidence, the tribunal came to the conclusion that the rider of the motorcycle caused the accident and awarded a compensation of Rs.1,00,000/- [Rupees One Lakh], directing the claimant to get the amount from the owner of the vehicle. The liability of the insurance company was exonerated. Challenging the said findings of the Tribunal, the present appeal has been filed.

5. Heard Mrs.P.Jessi Jeeva Priya, learned Counsel appearing for the appellant and Mr.M.Ashok Kumar, learned Counsel appearing for the 1st respondent and Mr.J.S.Murali, learned Counsel appearing for the 2nd respondent and perused the materials available on record.

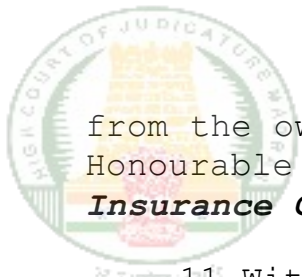
6. In the instant case, the appellant approached the Tribunal claiming compensation on the ground that the rider of the motorcycle, bearing Registration No.TN 67 R 2238 came in a rash and negligent manner and hit against his bicycle. In the claim petition itself, it is specifically stated that the vehicle was driven by the 1st respondent namely, N.Raji.

7. It is seen that though a criminal case was registered against the 1st respondent, the final report was filed against one Arockiaraj. He also pleaded guilty and paid the fine amount before the Criminal Court. Though there is a discrepancy with regard to the rider of the motorcycle, the Tribunal has categorically found that the bicycle was hit by the rider of the motorcycle and the rider of the motorcycle alone is responsible for the accident.

8. While deciding the liability, the Tribunal found that despite notice issued by the insurance company under Ex.R2, the owner has not responded. RW.1 the Assistant from the RTO office deposed that the 1st respondent herein was not issued with any licence. It is seen that notwithstanding all positive steps taken by the Insurance Company, no evidence was forthcoming from the owner with regard to filing of criminal case against him and possession of valid licence. Therefore, in my considered opinion that the insurer has discharged his burden of proof and it is held that the vehicle was driven by a person, who has no valid and effective driving licence.

9. It is also not disputed that the claimant is a third party and even if there is any violation of the policy conditions, the insurance company is liable to satisfy the award of the Tribunal and then recover from the owner of the vehicle.

10. In the light of the above fact, while confirming the award of the Tribunal, this Court directs the 2nd respondent insurance company, first to pay the award amount and thereafter, recover it



from the owner of the vehicle, by adopting the mode suggested by the Honourable Supreme Court in the case of **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

11. With the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. The 2nd respondent/ insurance company is directed to deposit the entire award amount with accrued interests at the rate of 7.5% per annum within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the award amount.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Motor Accidents Claims Tribunal (Subordinate Court),
Sivakasi.

Copy to

The Section Officer, (2C)

VR. Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s. J.S. MURALI, Advocate (SR-600[F] dated 08/01/2021)

+1 CC to M/s. P. JESSI JEVA PRIYA, Advocate (SR-569[F] dated
08/01/2021)

+1 CC to M/s. P. JESSI JEVA PRIYA, Advocate (SR-570[F] dated
08/01/2021)

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