



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

CORAM:

THE HON'BLE MR. JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.885 of 2010

in

MP (MD) Nos. 2 of 2010, 1 of 2012 &
CMP (MD) No.8776 of 2018

The Branch Manager,
National Insurance Co. Ltd.,
No.1754/1756, Ganesh Complex,
Monojiappa Street South,
Thanjavur.

: Appellant / 2nd Respondent

Vs.

1.Selvaraj : 1st Respondent/Petitioner

2.John Bosco : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 20.01.2009 made in M.C.O.P.No.116 of 2007 on the file of the Motor Accident Claims Tribunal (Sub Court), Pattukottai.

For Appellant : Mr.S.Srinivasa Ragavan

For R1 : Mr.S.Deenadhayan

For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the the fair and decreetal order dated 20.01.2009 made in M.C.O.P.No.116 of 2007 on the file of the Motor Accident Claims Tribunal (Sub Court), Pattukottai.

2.The case of the claimant before the Tribunal is that on 24.04.2006, at about 03.00 p.m., in the evening, the petitioner was riding his cycle, near Avikottai and at that time, the two wheeler bearing Registration No.TN-49-B-7480, was driven by its driver in a rash and negligent manner, came from the opposite direction and dashed against the petitioner. As a result of which,



he sustained injuries. So, because of the injuries, he was admitted in Thanjavur Medical College Hospital as inpatient and he took treatment from 25.04.2006 to 02.05.2006 and after that he was taking treatment as outpatient in a Private Nursing Home. At the time of the accident, he was earning Rs.5,000/- per month by doing agriculture labour work. The case was registered in Crime No.98 of 2006 on the file of the Madhukoor Police Station. Claiming compensation amount of Rs.5 lakhs, he approached the Tribunal.

3.The case of the second respondent, who is the appellant is that the accident did not happen because of the rash and negligent driving on the part of the first respondent's driver. Without permission of the owner of the vehicle/1st respondent, the rider have used the vehicle. At the time of occurrence, the petitioner suddenly crossed the road and invited the accident and other things were denied.

4.During enquiry before the Tribunal, on the side of the petitioner, two witnesses were examined and seven documents marked. On the side of the respondents, two witnesses were examined and one document marked.

5.At the conclusion of 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 first respondent's vehicle driver.

6.Regarding the compensation, based upon the disability sustained by the petitioner, the Tribunal awarded a sum of Rs.1.5 lakhs as compensation.

7.With regard to the contention of driving license, it is found that the Insurance Company has not established its case that the rider of the two wheeler was not owning proper driving license at the time of occurrence.

8.Challenging this findings, this appeal has been preferred by the appellant/Insurance Company.

9.Even though, in the grounds of appeal, quantum fixed by the Tribunal is also made as a ground, during the argument, the learned counsel for the appellant/Insurance Company restricted the same only with regard to the liability issue. So, regarding the quantum, no discussion is required. So, it is fairly admitted by the learned counsel for the appellant that before the Tribunal, no attempt was made by the appellant/Insurance Company to send notice to the first respondent to ascertain whether the rider was having proper driving license at the time of the occurrence. But, at the same time they have examined R.W.1, who is attached to the



jurisdictional Regional Transport Office, and as per the records available with them, it is seen that the rider of the two wheeler has not obtained any license from the office and this was commented by the Tribunal that there is a possibility of having obtained driving license from some other Regional Transport Office by showing change of address. But, it is the basic procedure that only on production of residential address, license are used to be issued by the Regional Transport Authorities. Simply because R.W.1 has stated that such a possibility, is there, it is not a ground to hold that the first respondent's vehicle driver was owning proper driving license. Even in the Motor Vehicle Inspector's inspection Report under Ex.P.5, it has been noted that the first respondent's driver/rider has not produced driving license. While that being so, adverse inference has to be drawn that the rider of the two wheeler was not owning proper driving license, at the time of the occurrence. So, the findings of the Trial Court that the Insurance Company has not established the violation of policy condition cannot be accepted. Failure on the part of the owner and the rider of the vehicle to produce driving license at the time of Motor Vehicle Inspector's inspection, leads to an inference that the driver was not owning proper driving license.

10. So, the findings of the Tribunal, on these aspects is set aside and it is concluded that the first respondent's vehicle rider was not owning proper driving license at the time of occurrence. Since it is a policy violation, the Insurance Company has to pay the amount and recover it from the owner. So, to such an extend, the award is required to be modified.

11. The award passed by the Tribunal is modified to the effect that the appellant/Insurance Company is directed to deposit the entire amount with interest and cost on behalf of the first respondent/owner within a period of two months from the date of receipt of a copy of this order, if the amount was not deposited earlier. The petitioner/claimant is permitted to withdraw the entire amount immediately and liberty is given to the appellant/Insurance Company to recover the same from the first respondent. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Sub Judge,
Motor Accident Claims Tribunal,
Pattukottai.

Copy to

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

+1 CC to Mr.S.DEENADHAYALAN, Advocate (SR-1245[F] dated 19/01/2021)

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-880[F] dated 18/01/2021)

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KM (03.03.2021) 4P 6C