

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

RESERVED ON	26.11.2021
DELIVERED ON	15.12.2021

WEB COPY

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.607 of 2021****and****C.M.P. (MD) Nos.5885 & 7594 of 2021**

The Manager,
HDFC ERGO General Insurance Company Limited,
Empire Arcade,
No.356/1. Omalur Main Road,
Opposite New Bus Stand,
Salem.

...Appellant/2nd Respondent

Vs.

1.Gandhimathi
2.Sakthivel

...1st Respondent/Petitioner...2nd Respondent/1st Respondent

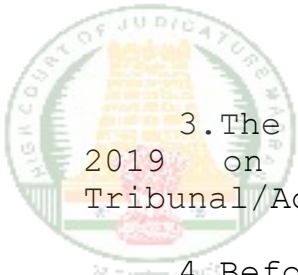
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree in M.C.O.P.No.246 of 2019 dated 21.11.2020 on the file of the learned Motor Accident Claims Tribunal/Additional Sessions Judge, Karur, and allow the appeal with Costs.

For Appellant :Mr.J.S.Murali
For R-1 :Mr.S.Gokulraj
For R-2 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Judgment and Decree, dated 21.11.2020 in M.C.O.P.No.246 of 2019, passed by the learned Motor Accident Claims Tribunal/Additional Sessions Judge, Karur,

2. It is a case of accident. On 18.02.2016 at 7 p.m., Kodumudi to Muthoor road, from east to west road, near Perumal kovil Pudur- Muthukumar Karumbukadu, the claimant's son Vivek was riding a Hero Hondo Splendar Plus two wheeler bearing Regn.No.TN-27-R-1077 and the claimant is a pillion rider, a lorry bearing Regn.No.TN-27-R-1077 driven by its driver with rash and negligent manner and dashed against the two wheeler. Due to the accident, the claimant and her son were sustained injuries.



3.The claimant has filed a claim petition in M.C.O.P.No.246 of 2019 on the file of the learned Motor Accident Claims Tribunal/Additional Sessions Judge, Karur, seeking compensation.

4.Before the Tribunal, on the side of the claimant two witnesses were examined as P.W.1 & 2 and marked twenty documents as Exs.P.1 to P.20 and two witnesses were examined as R.W.1 & R.W.2 and marked Ex.R.1 to Ex.R.8.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondent and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of lorry and directed the appellant/insurance company to pay a sum of Rs.8,13,220/-as compensation. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

6.Heard on either side. Perused the material documents available on record.

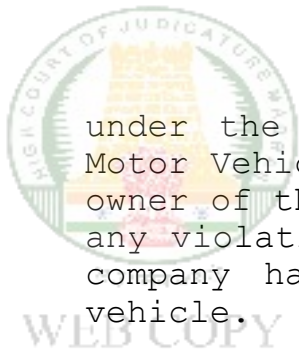
7. The learned counsel appearing for the appellant raised an objection that the tribunal has grossly erred in awarding inordinately high sum and also under various heads which is not warranted as compensation in the facts and circumstances of the case and hence unsustainable and liable to be interfered.

8.The 1st respondent herein/petitioner has filed a petition in M.C.O.P.No.249 of 2019 to claim compensation for the injuries sustained him by an accident occurred on 18.02.2016 at 7 p.m. In the said accident, the claimant has sustained injuries. The 2nd respondent herein is owner of the alleged vehicle and the appellant herein is the insurer of the lorry.

9.At the time of accident, the driver of the lorry was not in possession of valid insurance. But, the tribunal has awarded a sum of Rs.8,13,220/-and directed the appellant insurance company/2nd respondent to pay the compensation. Aggrieved by the award, the instant appeal has been filed by the insurance company, on the ground that, at the time of accident the driver of the lorry has no valid licence.

10.The learned counsel appearing for the appellant relied on a Judgment reported in **2020 (2) TNMAC 445 (SC)**. That case was arising out of a workman's compensation Act, in which the employer has to take mere caution to employ a driver. In the case on hand, the injured is a third party. As per Ex.P.7, the driver of the lorry has no valid licence.

11.In Workman Compensation Act, the claimant is the employee
<https://hcservices.ecourts.gov.in/hcservices/>



under the employer and claimed against the employer. But, under Motor Vehicles Act, the third party claimed compensation against the owner of the vehicle in which vehicle is insured by the owner. So, any violation of the policy under Motor Vehicles Act, the insurance company has to pay and recover the same from the owner of the vehicle.

12. There is no doubt that the owner of the lorry is liable to pay compensation. But, regarding third party, the insurance company has to pay and recover the amount from the owner of the vehicle. It is the claim by a third party.

13. Therefore, the tribunal has rightly ordered pay and recovery against the insurance company. This Court has no valid reason to interfere with the award passed by the Court below.

14. Finally, this Civil Miscellaneous Appeal stands dismissed by confirming the award and decree, dated 21.11.2020 in M.C.O.P.No.246 of 2019 passed by the learned Motor Accident Claims Tribunal/Additional Sessions Judge, Karur. However, this Court directs in terms of what has been stated in **Baljit Kaur's case** that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. No Costs. Consequently, 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 Motor Accident Claims Tribunal/
Additional Sessions Judge,
Karur.

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai (2C)

+1 CC to M/s.J.S.MURALI, Advocate (SR-38773[F] dated 15/12/2021)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-38799[F] dated 15/12/2021)

C.M.A. (MD) .No.607 of 2021
15.12.2021

PK(CO)
KB(24.12.2021) 4P 6C