



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) No.726 of 2016

and

C.M.P. (MD) No.7288 of 2016

The Divisional Manager,
The New India Assurance Company Ltd.,
242-B, Kamarajar Salai,
Madurai - 9.

... Appellant/2nd Respondent

Vs.

1.A.Vijayakumar

... 1st Respondent/Petitioner

2.A.Rajaram (died)

... 2nd Respondent/1st Respondent

3.R.Meenakshi

... 3rd Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Petition is filed under Section 173 of Motor Vehicle Act, 1988, to set aside the decree and judgment, dated 07.03.2016 made in M.C.O.P.No.2484 of 2002 on the file of the IV Additional District Judge, Madurai.

For Appellant	: Mr.A.Elango, Advocate
For R1	: Mr.T.Selvakumaran, Advocate
For R3	: No Appearance

JUDGMENT

The appellant / New India Assurance Company Ltd., the second respondent in M.C.O.P.No.2484 of 2002 on the file of the Motor Accidents Claims Tribunal/IV Additional District Judge, Madurai has filed the present appeal. The first respondent/claimant has filed the claim petition seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident on 21.06.2001.

2.The case of the claimant in nutshell is as follows:

On 21.06.2001, the claimant was travelling in the motor cycle bearing Registration No.TN-59-B-2312 as a pillion rider from north to south, driven by one Arunkumar, while the vehicle was proceeding near Planganatham Junction from the opposite south to north direction another motor cycle bearing Registration No.TN-59-L-9578 driven in a rash and negligent manner and dashed against the petitioner's two wheeler, as a result of which, he sustained injuries as a result of which, he fell down and sustained multiple



injuries all over his body.

3.The claimant has filed a petition in M.C.O.P.No.2484 of 2002 on the file of the Motor Accidents Claims Tribunal/IV Additional District Judge, Madurai, seeking compensation of Rs.4,00,000/-.

4.Before the Tribunal, on the side of the claimant three witnesses were examined as P.W.1 to P.W.3 and marked eleven documents as Ex.P1 to Ex.P11. On the side of the respondents, one witness was examined as R.W.1 and marked two documents as Ex.R1 and Ex.R2.

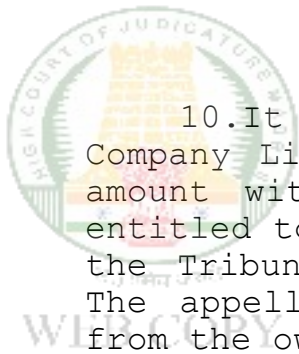
5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsels for the claimant and respondents and also on appreciating the evidences on record, held that the accident was occurred only due to the rash and negligent driving of the driver of the second respondent herein and directed the appellant/Insurance company to pay a sum of Rs.2,04,450/- as compensation. Against which, the appellant/Insurance Company has preferred this appeal.

6.The learned counsel appearing for the appellant/Insurance Company contended that the rider of the injured two wheeler bearing Registration No.TN-59-L-9578 was not having a valid driving licence on the date of the accident but the Tribunal fastened the liability on the appellant /Insurance Company. Therefore, he prayed this Court that 'pay and recovery' may be ordered by this Court.

7.Heard Mr.A.Ilango, the learned counsel appearing for the appellant and Mr.T.Selvakumar, learned counsel appearing for the first respondent and perused the materials available on record.

8.On perusal of records, it shows that in the claim petition, the name of the rider shown as Rajaram, who is the first respondent was also set ex-parte and not appear before the Court to prove he has valid license. There is no presumption that there is no valid license, who drove the injured vehicle. Hence, the Tribunal ought to have ordered for pay and recovery. But the Tribunal has fixed entire liability on the appellant/Insurance Company. Since valid driving license is not proved the owner has to pay the compensation set ex-parte and the claimant could not suffer finally.

9.In the facts and circumstances of the present case, the order passed by the Tribunal in M.C.O.P.No.2484 of 2002 on the file of the IV Additional District Judge, Madurai, is hereby modified. The appellant/New India Assurance Company Limited, is directed to pay the award amount to the first respondent/ claimant in the first instance and then, recover the same from the owner of the motorcycle bearing Registration No.TN-59-L-9578 on the same cause of action.



10.It is submitted that the appellant//New India Assurance Company Limited that they have already deposited the entire award amount with accrued interest. The first respondent/claimant is entitled to withdraw the same by filing necessary application before the Tribunal. Interest for the default period is to be exempted. The appellant/Insurance Company is permitted to recover the same from the owner.

11.In the result, the Civil Miscellaneous Appeal is partly allowed. 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-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 IV Additional District Judge,
Motor Accidents Claims Tribunal/
Madurai.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.A.ILANGO, Advocate (SR-39224[F] dated 17/12/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-39541[F] dated 20/12/2021)

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RS (15.02.2022) 4P-6C