BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	24.02.2021
Date of Judgment	08.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.736 of 2015
and
MP(MD)No.1 of 2015

The New India Assurance Company Limited,
represented by Divisional Manager,
Rekha Towers, 252, Kamarajar Salai,
Madurai-625 009. : Appellant/2nd Respondent

Vs.

1.Mary Philominal : 1st Respondent/1st Respondent
2.Kumar : 2nd Respondent/Petitioner

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), Ramanathapuram, in MCOP No.2 of 2013, dated 03.02.2015.

For Appellant : Mr.M.S.Sureshkumar

For 1st Respondent : No appearance

For 2nd Respondent : Mr.G.Thiagarajan (No appearance)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Ramanathapuram, in MCOP No.2 of 2013, dated 03.02.2015.

2.The short facts of the case is that on 03.11.2008 at about 4.30 pm after finishing the work, the claimant herein along with some others were travelling in the auto TN65-A-0700 to their village and when the auto was nearing Panthakalliamman Kovil on the way to Vadakattu, the driver of the auto drove it in a rash and negligent manner and due to it, it was capsized. In that process, the claimant and other sustained injuries. The claimant herein filed a claim petition seeking compensation of Rs.10,00,000/- for the injuries sustained by him in the accident.

3.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimant, 2 witnesses were examined and marked 21 documents. On the side of the Appellant Insurance Company, 1 witness was examined and 2 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 auto has caused the accident and awarded compensation of Rs.15,00,000/- together with interest @ 7.5% p.a. Aggrieved over the same, the appellant Insurance Company is before this court.

6.Heard the learned counsel appearing for the appellant and perused the materials available on record.

7.In this case, the dispute is only in respect of the liability. The learned counsel appearing for the appellant Insurance Company/2nd respondent submitted that at the time of accident, the driver of the auto did not possess a driving licence and badge and it amounts to violation of policy condition and hence, the appellant/2nd respondent Insurance Company is not liable to pay the compensation to the claimants.

8.In this case, on the side of the appellant Insurance Company, the RTO official was examined as RW1. He deposed that at the time of accident, the driver of the auto did not possess a driving licence and badge. Perusal of the records it shows that in the charge sheet it is stated that the driver of the auto has no driving licence. The driver of the auto has also admitted said fact and paid a fine of Rs.1,900/- on 15.07.2009. But the tribunal wrongly came to the conclusion that there was contract of insurance between the owner of the auto and the Insurance Company and the Insurance Company is liable to pay the compensation, which is not correct. Hence, it is held that the Insurance Company is not liable to pay the compensation to the claimants and only the owner of the auto is liable to pay the compensation to the claimants.

9.As far as quantum of compensation is concerned, the tribunal considering the evidence of PW2 Doctor and also by considering the avocation and age of the injured, held that the claimant had sustained 100% functional disability. By taking into account the monthly income of the injured at Rs.6,000/-and by applying proper method, the tribunal has awarded Rs.11,52,000/- for disability. Further, the tribunal has awarded Rs.3,48,000/- in other heads. This court finds no error in the award of the tribunal. But this fixed the entire liability on the part of the owner of the auto, since the driver of the auto did not possess a driving licence and badge to drive the auto.

10.In the result, the Civil Miscellaneous Appeal is **allowed** by setting aside the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay the award. It is open to the claimant to claim the award amount, which was awarded by the Tribunal, from the owner of the offending vehicle by filing appropriate proceedings, in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount already deposited, if any, before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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<u>Note :</u>

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,

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

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

Judgement made
in <u>CMA(MD)No.736 of 2015</u>
08.06.2021

sgs(CO)
TR(28.06.2021) 3P 4C