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C.M.A.No.2149 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2022

Pronounced on : 21.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2149 of 2012
and M.P.No.1 of 2012

The National Insurance Co. Ltd.,
Kumbakonam represented by its
Branch Manager,
Having his office at
Kumbakonam Town and
District and Munsif

..Appellant/2nd respondent

Vs.

1.Sudhakar

2.S.Packirisamy

3.Raja

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 13.06.2011 passed in M.A.C.T.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal, Nagapattinam (Chief Judicial Magistrate).



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For Appellants : Mr.S.Vadivel

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award dated 13.06.2011 made in M.A.C.T.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal, Nagapattinam (Chief Judicial Magistrate).

2. The Appellant Insurance company has challenged the impugned award primarily on the ground that they have not been granted pay and recovery rights, despite the fact that the rider of the Motor Cycle who caused the accident was not possessing a valid driving license at the time of accident, which is in violation of the policy condition.

3. The claimant/1st respondent filed a claim petition in M.A.C.T.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal, Nagapattinam (Chief Judicial Magistrate), claiming a sum of Rs.3,00,000/- as



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compensation for the injuries sustained by him in the road accident which took place on 11.03.2008.

4. According to the first respondent/claimant, on 11.03.2008 at about 09:30 a.m., while he was proceeding as a pillion rider towards Thirumarugal in a motorcycle belongs to the 2nd respondent and insured with the appellant-Insurance Company, which was driven by one Bharathidasan, they tried to overtake a tractor near Thirumarugal New Petrol Bunk. At that time, the driver of the Tractor suddenly applied brake. As a result of which, the rider of the motorcycle dashed against the Tractor. Due to the said impact, the claimant along with the rider of the motor cycle fell down and the claimant has sustained injuries. Hence, he filed a claim petition in M.A.C.T.O.P.No.72 of 2011, seeking compensation for a sum of Rs.3,00,000/- before the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Nagapattinam.

5. The Tribunal, considering the pleadings, oral and documentary evidence, held that the claimant has sustained permanent disability as a result of the accident due to the rash and negligent driving of the rider of the motorcycle



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belongs to the second respondent insured with the appellant/Insurance Company and therefore, granted a sum of Rs.88,500/- as total compensation and directed the appellant/Insurance company and the second respondent/owner of the motorcycle to jointly and severally to pay the compensation to the claimant.

6. Challenging the award dated 13.06.2011 made in M.A.C.T.O.P.No.72 of 2011, the appellant/Insurance Company have come out with the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay the compensation to the claimant, because the accident had occurred only due to the negligence on the part of the rider of the motorcycle who does not possess valid driving licence at the time of accident, which is in violation of the terms and conditions of the Insurance Policy. Hence, prayed to set aside the award of the Tribunal.



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8. Heard the learned counsel for the appellant-Insurance Company and there is no representation on behalf of the respondents. Respondents No.2 and 3 had remained *ex parte* before the Tribunal.

9. This Court has perused the entire materials available on record.

10. The Tribunal, on analysis of evidence, pointed out that P.W.1-Injured claimant travelled as pillion rider in the motor cycle, the rider tried to overtake the 3rd respondent's Tractor and at that time, Tractor driver suddenly applied brake and the accident occurred. It is further observed by the Tribunal that P.W.1 given complaint Ex.P.1. Ex.P.1 reveals that the accident occurred due to rash and negligent riding of the 1st respondent's motor cycle rider only. As such, the Tribunal came to a conclusion that the accident occurred due to rash and negligent riding of 1st respondent motor cycle rider only.

11. The testimony of R.W.1 and R.W.2 is that at the time of accident, the rider of the motor cycle is not having valid driving licence and therefore, the



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second respondent is not liable to pay compensation. The said contention of the second respondent was not accepted by the Tribunal. The Tribunal pointed out that in the absence of examining the investigating officer and not marking his report, the contention of R.W.1 and R.W.2 cannot be accepted. It is concluded by the Tribunal that at the time of accident, the first respondent's vehicle is insured with the 2nd respondent/insurance company, therefore, the respondents 1 and 2 are liable to pay the compensation.

12. In this appeal, the only contention put forth by the learned counsel for the appellant is that the Tribunal erred in fastening the liability on the appellant. But the appellant/insurance company has not adduced any credible evidence in the form of report to show that the rider of the motor cycle is not having valid driving licence and RW2's evidence was based on the records. The Tribunal found that R.W.2 could not know whether the rider of the motor cycle is having driving license or not. In my view, since there is no credible and acceptable evidence adduced by the insurance company to establish that there is breach of policy condition, the finding of the Tribunal cannot be found fault with. Accordingly, this court hold that the award of the Tribunal does not call for interference.



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Appeal is, therefore, dismissed. The appellant/insurance company shall pay the compensation to the 1st respondent/claimant along with the accrued interest. No costs. Consequently connected miscellaneous petition is closed.

21.06.2022

msv/nvsri

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Nagapattinam

2.The Record Keeper,
V.R.Section, High Court,
Chennai.



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J.NISHA BANU, J.

nvsri

Judgment in
C.M.A.No.2149 of 2012

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