IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1610 of 2018

K.Anandakumar ... Appellant

..Vs..

1.S.Rajasekaran

2.The Divisional Manager
United India Insurance Company Limited
No.12003-A, M.M.Reddy Complex
Old Bangalore Road
Hosur-635 109. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 21.07.2010 made in M.C.O.P No.73 of 2009 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Hosur, Krishnagiri District.

For Appellant : Mr.PA.Sudesh Kumar
For M/s.Sun Associates

For Respondents : Mr.S.Arunkumar for R2
R1- No Appearance

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.07.2010 passed by the Motor Accident Claims Tribunal/ Sub Court, Hosur, Krishnagiri District, in MCOP No.73 of 2009.

2.The accident occurred on 17.01.2007 at 5.30 p.m., at Denkanikottai to Anchetty Road, near Noganoor Village. The Denkanikottai Police Station, registered a case in Crime No.29/2007 under Sections 279 and 338 IPC. While the claimant was going by foot from his residence to his agriculture field, the rider of the TVS Victor GX Motor bike bearing Registration No.24-X-1308 had dashed against the claimant and thereby, he sustained grievous injuries. Thereafter, the claim petition has been filed. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle and at the time of accident, the driver of the offending vehicle did not possess the driving license. Accordingly, the 1st respondent is made liable to pay a compensation to the appellant/claimant.

3. As far as the quantum of compensation is concerned, the learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Tribunal is inadequate and on the lesser side. The claimant suffered grievous injuries and therefore, the Tribunal ought to have granted more compensation under various heads including the permanent disability. The doctor has assessed the disability at 40%, but the Tribunal has fixed the disability at 35%. The Tribunal has also erred in not adopting the well recognized principle of pay and recovery by the insurer from the police holder, who violated the terms of the insurance.

4. The learned counsel appearing on behalf of the second respondent/ Insurance Company disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads and no enhancement needs to be granted. At the time of accident, the driver of the offending vehicle did not possess the driving license and hence, the liability fixed on the

part of the 1st respondent/owner of the vehicle is correct. Therefore, the Tribunal is right in granting the compensation under various heads and it does not call for any interference. Hence the appeal is liable to be dismissed.

5. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company and perused the entire materials available on record.

6. Before the Tribunal, on the side of the Appellant/claimant, two witnesses were examined as PW1 and PW2 and eight documents were marked as Ex.P1 to Ex.P8. On the side of the the 2nd responent herein/Insurance Company, two witnesses were examind as RW1 and RW2 and Ex.R1 to Ex.R4 were marked.

7. A perusal of the award would reveal that Ex.P1-First Information Report was registered against the rider of the TVS Victor Motor bike bearing Registration No.TN-24-X-1308 stating that he was responsible for the accident, which corroborated the evidence of PW1/claimant. But, at the time

of the accident, the 1st respondent, who is the owner of the offending vehicle did not possess the driving license. From the evidence of RW1, it reveals that Ex.R3 letter was sent by the 2nd respondent Insurance company to the 1st respondent to produce the copy of the driving license of the driver of the offending vehicle namely, Sardar. Even after receipt of the same, he did not produce the driving license. In this regard, summon was also issued by the Tribunal to the driver of the vehicle namely, Sardar to produce the copy of driving license. Even thereafter, he has failed to produce the driving license. The 1st respondent/owner of the TVS Victor Motor bike has also failed to enter appearance before the Tribunal and hence, he was set exparte. All these factors will clearly reveal that the driver of the TVS Victor Motor bike was not possessing a driving license at the time of the accident. However, there was Insurance policy coverage for the said TVS Victor Motor bike as seen from the insurance policy which was marked as Ex.R1 by the second respondent/Insurance Company before the Tribunal.

8. It is now settled law that whenever the driver of the insured vehicle was not possessing a driving license at the time of the accident, the Insurance

Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). However, as seen from the impugned award, without considering the aforesaid settled law, the Tribunal has fixed the entire liability only on the part of the 1st respondent, who is the owner of the vehicle and failed to award pay and recovery rights to the second respondent/Insurance Company**.** Therefore, this Court is of the opinion that it would be appropriate to fix the liability on the second respondent /Insurance Company to pay the compensation to the appellant/ claimant and thereafter, recover the same from the owner of the vehicle. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

9. In the result,

(i) This Appeal is partly allowed.

(ii) The entire liability fixed on the 1st respondent, who is the owner of the vehicle, by the Tribunal under the impugned award is set aside.

(iii) The second respondent Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.No.73 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent, who is the owner of the vehicle, in accordance with law.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

21.12.2022

Index:Yes/No
Speaking/Non-Speaking Order:Yes/No
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To
1. The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Hosur, Krishnagiri District.
2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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