



C.M.A.No.2890 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2890 of 2014

Babu

...Appellant

Vs

1.P.Vijaya

2.The Divisional Manager,
The New India Assurance Company Limited,
No.69, 70, Sheikpet, Nadu Street,
Kancheepuram.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 13.03.2013 made in M.C.O.P.No.257 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram.

For Appellant : Mr.G.Vinodh Kumar

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For Respondent 1 : No Appearance

For Respondent 2 : Mr.P.G.Padmanabhan

JUDGEMENT

The above appeal is filed by the petitioner before the Motor Accident Claims Tribunal, Kancheepuram in M.C.O.P.No.257 of 2008. The petitioner had filed the above Claim Petition seeking compensation for the injuries sustained by him in a road accident on 27.08.2007. He is aggrieved by the fact that the Tribunal below has passed an award directing the 1st respondent, owner of the vehicle to pay the compensation and exonerating the Insurance Company on the ground that the driver of the 1st respondent's vehicle did not possess a badge to drive a lorry, which is a heavy motor vehicle. That apart, the quantum of compensation was also questioned.



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2. Heard both the learned counsels and perused the records.

3. The Tribunal below has exonerated the 2nd respondent / Insurance Company on the ground that from the evidence of R.W.1 and Ex.R.1, it is seen that the driver of the 1st respondent's vehicle did not possess a valid and subsisting badge to drive a heavy motor vehicle like lorry on the date of the accident, i.e., 27.08.2007. Therefore, the Tribunal had exonerated the 2nd respondent / Insurance Company on the ground that there is a breach of the policy condition.

4. The Tribunal has passed an award for a sum of Rs.73,000/-. Though the question of quantum was raised, however, the claimant had made submissions only on the first point, namely, the liability that had been fastened on the 1st respondent, owner of the vehicle.

5. The ground on which the Insurance Company has been



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exonerated is that there has been breach on the part of the driver of the 1st respondent's vehicle in as much as he did not have a valid badge on the date of the accident. This is a breach of the policy condition as contemplated under Section 149 (2) (a) (i) (c) of the Motor Vehicles Act. This fact is proved through the evidence of R.W.1 and Ex.R.1.

6. Since it is the breach of the contract of Insurance, the Insurance Company is entitled to realise the award amount from their insurer after compensating the claimant who is a third party to the contract of insurance. Therefore, the award of the Tribunal below in so far as it exonerates the Insurance Company from compensating the appellant is set aside.

7. As regards compensation granted, the same appears to be fair and reasonable and there is no necessity to alter the same.



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8. The Civil Miscellaneous Appeal is partly allowed giving directions to the 2nd respondent / Insurance company to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.No.257 of 2008. On such deposit, the claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal. The Insurance Company shall thereafter recover the said amount from their insurer without resorting to separate proceedings. In all other respects the award of the Tribunal below stands confirmed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,

The Motor Accident Claims Tribunal,
Subordinate Judge,
Kancheepuram.



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P.T.ASHA, J.,

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