



C.M.A(MD)No.1144 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1144 of 2009

The Branch Manager,
The Oriental Insurance Co., Ltd.,
Door No.281, Gandhipuram Cross Cut Road,
Coimbatore, Coimbatore District. ... Appellant/2nd Respondent

Vs.

1.Shanmugam

2.M.Najiya ... Respondents

(R2 remained *ex-parte* before
the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying this Court to set aside the award of Rs.60,000/- (Rupees Sixty Thousand Only) passed in MCOP.No.23 of 2004 dated 28.04.2006 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Ramanathapuram.

For Appellant	: Mr.S.Veeranasamy
For Respondents	: R-1 Died
	R-2 Exparte



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JUDGMENT

This Civil Miscellaneous Petition is filed to set aside the award passed in MCOP.No.23 of 2004 dated 28.04.2006 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Ramanathapuram.

2. Brief facts of the claim petition are as follows: -

On 28.08.2003 at about 12.30 pm., the claimant was riding his by-cycle on the left side of the road. At that time, a Bajaj Auto bearing registration No.TN-65-C-7465, belongs to the second respondent herein and insured with the appellant, driven by its driver in a rash and negligent manner, dashed against the claimant's vehicle. Due to which, the claimant sustained grievous injuries. Immediately, he was admitted in the Government Hospital, Ramnad, where, he was taken treatment as inpatient from 30.08.2003 to 24.09.2003. Thereafter, he has taken treatment in a private clinic. Hence, he filed the claim petition claiming compensation of Rs.1,25,000/-, alleging that the accident had happened due to the rash and negligent driving of the driver of the Auto.



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3. The owner of the Auto remained absent before the Tribunal and therefore he was set *exparte*. The second respondent/Insurance Company contested the claim petition on all the grounds available to the insured.

4. Before the Tribunal, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and nine documents were marked as Exs.P.1 to P.9. On the side of the appellant/Insurance Company, five witnesses were examined as R.W.1 to R.W.5 and six documents were marked as Exs.R.1 to R.6.

5. The Tribunal, considering the pleadings and both oral and documentary evidence let in by both the parties, partly allowed the claim petition and awarded a sum of Rs.60,000/- as compensation along with interest at the rate of 7.5% per annum as compensation to the claimant. Against the said award of the Tribunal, the appellant/Insurance Company has come out with the present appeal.

6. It is the main contention of the appellant that the accident had occurred only on 30.08.2003. Since the insurance policy was expired on



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28.08.2003, the claimant claims that the accident took place on 28.08.2003 and to prove the same, the appellant examined R.W1-Record Clerk of the Ramanathapuram Government Hospital and produced Ex.R1. There is no evidence to show that the accident had occurred on 28.08.2003 and the driver of the Auto-rickshaw was having only Light Motor Vehicle Licence and he was not having necessary endorsement to drive the Auto-rickshaw on the date of accident and that the appellant has also proved the same by way of examining RW.5. Without considering the above, the Tribunal has erroneously passed the order against the Insurance Company.

7. A perusal of Ex.P1-F.I.R and Ex.P2-Charge Sheet, it is clear that the accident had occurred on 28.08.2022. In the evidence of P.W-3-Dr.Saiyad Rasithin, he deposed that on 28.08.2003, the first respondent, who was injured in a road accident, came to him for treatment and he only gave first-aid to him and in this regard, Ex.P9-Medical Certificate was also issued. The appellant is miserably failed to produce the documents to substantiate the contention that the accident had occurred on 30.08.2003. Therefore, in the considered opinion of this Court that on the date of accident, the insurance policy is



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in force. The law is now well settled that merely because the driver of the vehicle has no valid driving licence at the time of the accident, the Insurance Company cannot get rid of its liability. Considering the same, the Tribunal has rightly ordered that the insurance company shall pay the compensation amount to the claimant and thereafter, recover the said amount from the owner of the vehicle. I find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit.

8. In view of the above, the Civil Miscellaneous Appeal is dismissed by confirming the Award, dated 28.04.2006, made in M.C.O.P.No.23 of 2004, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Ramanathapuram. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of M.C.O.P.No. 23 of 2004, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Ramanathapuram, less the amount already deposited, if any, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. Thereafter, the appellant/Insurance Company is at liberty to recover the award amount from the owner of the vehicle.



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9. On such deposit being made, the first respondent/claimant is entitled to withdraw the award amount with proportionate accrued interest and costs, less the amount already withdrawn, if any, by making necessary application before the Tribunal. No costs.

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Index :Yes/No
Internet :Yes/No
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To

- 1.The Motor Accidents Claims Tribunal cum
Chief Judicial Magistrate,
Ramanathapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN .,J.

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JUDGMENT MADE IN
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