



C.M.A.(MD)No.1163 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 31.10.2022

Delivered On : 24.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1163 of 2009

and

M.P.(MD)No.3 of 2009

The Divisional Manager

The New India Assurance Co. Ltd.,

242-B,Kamarajar Salai,

Madurai.

... Appellant /2nd Respondent

Vs.

1.Periyathambi

... 1st Respondent / Petitioner

2.K.Kumaresan

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 21.11.2008, made in M.C.O.P.No.1299 of 2004, on the file of the Motor Accident Claims Tribunal- Additional District and Sessions Court – Fast Track Court No.3, Madurai.

For Appellant

: Mr.B.Vijaykarthikeyan

For Respondents

: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 21.11.2008, made in M.C.O.P.No.1299 of 2004, on the file of the Motor Accident Claims Tribunal- Additional District and Sessions Court – Fast Track Court No.3, Madurai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.1299 of 2004, is as follows:

On 02.03.2003, at about 8.00 pm., when the petitioner was driving a bicycle in a slow speed, giving the extreme left side of the road, near Kuppammal Odai, a TVS Suzuki bearing Registration No.TN-41-D-7494 driven by its driver in a rash and negligent manner, came from the opposite direction, dashed against the petitioner. He sustained injuries, he took first aid in the Batlagundu Government Hospital, then he was taken to Government Rajaji Hospital, Madurai. He undergone treatment from 02.03.2003 till 17.03.2003 as inpatient. The petitioner was an agricultural coolie and he was earning Rs.3,000/- per month. Due to the disability, he could not continue his work and he claimed a sum of Rs.1,00,000/- as compensation.



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WEB COPY 3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.1299 of 2004, is as follows:

The manner of accident is wrongly stated. The accident has taken place only because of the sudden crossing of the cyclist. It was the claimant, without observing the traffic, has contributed to the occurrence. The vehicle was not insured with the second respondent, at the time of accident. The second respondent is not liable to pay compensation to the petitioner. The petition is liable to be dismissed.

4. The first respondent was set as exparte. 2 witnesses were examined and 6 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondent. After considering both sides, the Tribunal has awarded Rs.24,000/- as compensation to be paid by the second respondent on behalf of the first respondent.

5. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal has failed to consider that the earlier policy was issued for the period from 11.09.1998 till 10.09.1998. The subsequent policy was issued from 10.03.2003 till 09.03.2004. The policy was not valid at the time of accident. The



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accident took place on 02.03.2003 and there was no policy at the time of accident and that the insurance is to be exonerated from the charges. The Tribunal has not given any findings as to the liability.

6. Though name of the respondents is printed, there was no representation on the side of the respondents. Hence, no oral argument on the side of the respondents is recorded.

7. On the basis of the evidence of P.W.1 and on the basis of Ex.P1 and P.2, it is decided that the rider of the two wheeler was responsible for the accident. The owner of the vehicle remained exparte before the Tribunal. There was no oral or documentary evidence on the side of the second respondent. Hence, it is decided that the rider of the two wheeler was responsible for the accident.

8. It is seen that though the Insurance Company has taken a stand that the Insurance policy was not valid on the date of accident, the insurance company has failed to let in oral or documentary evidence to prove the same. Hence, the Tribunal has fixed the liability on the insurance company. It is for the claimant to prove that the insurance policy was valid at the time of accident. The owner of the vehicle was remained exparte. In the above circumstances, the order of the Tribunal is not



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acceptable. The Tribunal ought to have fixed the liability on the owner of the vehicle.

9. For the above reasons, it is decided that the appellant is to be exonerated from the charges and the liability is fixed on the owner of the vehicle. There is no dispute regarding the quantum fixed by the Tribunal. Hence, the quantum is hereby confirmed.

10. This appeal is allowed. The order of the Tribunal is modified that the owner of the vehicle is liable to pay compensation to the claimant and the appellant is exonerated from the charges. No costs. Consequently, connected Miscellaneous Petition is closed.

(i) The appellant -Insurance Company is exonerated from the liability. Since the appellant – Insurance Company is exonerated, the Insurance Company is permitted to get refund of the amount, if any already deposited.

(ii) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(iii) The second respondent herein - owner of the vehicle, is directed to deposit the entire compensation of Rs.24,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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(iv) On such deposit being made, the Tribunal may permit the claimant to withdraw the entire award amount with interest and costs on filing proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

24.11.2022

Index : Yes/No

Internet : Yes/No

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Note : 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 Additional District and Sessions Judge –

Motor Accident Claims Tribunal- Fast Track Court No.3,
Madurai.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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24.11.2022