BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1208 of 2009

and

M.P(MD) No.2 of 2009

United India Insurance Company Ltd.,
Through its Divisional Manager,
D.O-II, Salai Road,
Thillai Road,
Trichirapalli-18. ... Appellant /2nd Respondent

vs.

1.Minor S.Vinoth
S/o.Sethuraman
rep. through his Mother & guardian
Mrs.Saraswathi
W/o.Sethuraman ... 1st Respondent/Petitioner

2.C.Sethuraman ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.46/07 dated 20.06.2008 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Kuzhithalai.

For Appellant : Mr.S.Natarajan
For Respondents : No appearance

JUDGMENT

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This Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 20.06.2008 made in M.C.O.P.No.46 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Kuzhithalai.

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

On 09.11.2003 at 09.20 hours, the first respondent/claimant was proceeding towards South Thillainagar Colony Main Road, Tiruchirappalli. At that time, an Ambassador car bearing Registration No.TAC-3040 driven by its driver in rash and negligent manner dashed against the claimant/first respondent. In the accident, the claimant had sustained multiple grievous injuries all over his body. Immediately, he was taken to Government Hospital, Tiruchirappalli, wherein he was admitted as an inpatient and given treatment. He had undergone a major operation and took medical treatment as an inpatient for a period of more than eight days and thereafter, as an outpatient, he had taken treatment for a period of three months, in the private hospital. Inspite of the best medical treatment, the wound was not properly healed and he sustained permanent disabilities. There is restriction of movement ... his left hand. According to the claimants, the rash and negligent driving of the driver of the car belonging to the second respondent was caused the accident. Since the said offending car was insured with the appellant/Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation. Hence, the first respondent/claimant filed the claim petition claiming compensation of Rs.2,00,000/-.

3. The second respondent/owner of the vehicle remained absent before the Tribunal and therefore, he was set exparte.

4.In the claim petition, the appellant/Insurance Company filed their counter, wherein, they denied the averments made in the claim petition. Further, in the counter affidavit, it has been stated that the claim made by the first respondent/claimant is on the higher side.

5.Before the Tribunal, on the side of the claimant, two witnesses were examined as P.W.1 and P.W2 and eleven documents were marked as Exs.P.1 to P.11. On the side of the appellant/Insurance company, two witnesses were examined as R.W.1 and R.W2 and two documents were marked as Exs.R1 and R2.

6.The Tribunal, after considering the oral and documentary evidences and arguments made on either side, allowed the claim petition and awarded a sum of Rs.66,850/- along with **(*)6%** interest per annum as compensation to the claimant. Against which, the appellant/Insurance Company has filed this present appeal.

7.The learned counsel appearing for the appellant/Insurance Company submitted that the driver of the offending vehicle did not have valid driving licence at the time of accident, it is a violation of the policy conditions and hence, the appellant/Insurance Company is not liable to pay compensation. Therefore, the Tribunal ought to have exonerated the appellant/Insurance Company from paying the compensation as there was a breach of policy conditions. But, the Tribunal has erroneously directed the appellant/Insurance company to pay the entire compensation to the claimant. Hence, the learned counsel prays for setting aside the order of the Tribunal.

8. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on records. There is no representation for the respondents.

9. It is evident from the records that the manner of the accident and the rash and negligence on the part of the driver of the offending vehicle are not in dispute. On the question of liability, it is seen that, at the time of the accident, the driver of the car has not possessed valid driving licence. The law is now

well settled that merely because the driver of the vehicl... no valid driving licence at the time of the accident, the Insurance Company cannot get rid of its liability, however, after paying the compensation amount to the claimant, the Insurance Company can recover the amount from the owner of the vehicle.

10. In view of the above fact, the order passed by the Tribunal directing the Insurance Company to pay the award amount is liable to be modified. The appellant/Insurance Company is directed to pay the award amount to the first respondent/claimant at the first instance and thereafter, recover the same from the owner of the offending car.

11. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant/Insurance Company and a perusal of the award also shows that it is not on the higher side and the same is liable to be confirmed.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The award and decree dated 20.06.2008 made in MCOP No.46 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Kuzhithalai, is modified. The quantum of compensation and the rate of interest fixed by the Tribunal as **(*)6%** per annum are confirmed. The Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order at the first instance and thereafter, recover the same from the insured. Since the claimant is the minor, the Tribunal is directed to deposit the amount in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor attains the age of major and the mother of the minor claimant, who is the guardian of the minor claimant, is permitted to withdraw interest once in three months directly from the bank. No costs. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

(*)Corrected as per the order of this court dated 19.10.2022 made in CMA(MD).No. 1208 of 2009

Sd/-

Assistant Registrar (CS I)

// True Copy //

/11/2022

Sub Assistant Registrar(CS)

cp/skn

(*) To be substituted the order already despatched on 06/10/

To

1.The Motor Accident Claims Tribunal (Subordinate Court),
Kuzhithalai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.NATARAJAN, Advocate (SR-43849[F] dated 08/09/2022)

C.M.A(MD)No.1208 of 2009
07.09.2022.

SS/24.09.2022/ 4P/ 5C
KB/08.10.2022/ 4P/ 5C