



C.M.A(MD)No.1264 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2022

Pronounced on : 23.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1264 of 2012

The Branch Manager,
Iffco Tokyo General Insurance
Company Limited,
New No.28, Old No.195,
North Usman Road,
T.Nagar,
Chennai – 600 017.

...Appellant/ Respondent - 2

Vs

1.Karthik

... Respondent / Petitioner

2.B.Saitu

... Respondent / Respondent -1

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order dated 31.01.2012 made in M.C.O.P.No.127 of 2010 on the file of Motor Accidents Claims Tribunal, (Sub Court), Pudukottai and allow this Civil Miscellaneous Petition.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.G.Mathavan for R.1

No Appearance for R.2



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 127 of 2010 on the file of Motor Accidents Claims Tribunal, (Sub Court), Pudukottai. The appellant herein is the second respondent, first respondent herein is the claimant, the second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 25.08.2009 at about 7.30 pm, when the petitioner was walking along the Aranthangi to Pudukkottai road, near Sambath petty shop, a motorcycle bearing registration number TN 02 W 5294 came in a rash and negligent manner and dashed against the petitioner. He was taken to the Government Hospital, Aranthangi. After getting first aid, he was admitted in Trichy, Maruthi private Hospital and he took treatment as inpatient from 25.08.2009 till 08.09.2009. He was working as a Registration Clerk in Pudukkottai Saratha Motors and he was earning a sum of Rs.3,000/- per month. At the time of accident, the petitioner was aged about 23 years. Due to the disability, the petitioner could not do his work now and the petitioner claim a sum of Rs.10,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent is as follows:

The manner of accident is denied. The age, income, injuries, medical expenses, mode of treatment, disability are denied. In the wound certificate, it was stated that the petitioner was also riding a two wheeler. The owner of the two wheeler, the insurer of the two wheeler are to be impleaded as necessary parties. The petition to be dismissed.

4. Two(2) witnesses were examined and fifteen(15) documents were marked on the side of the petitioner. Four(4) witnesses were examined and two(2) documents were marked on the side of the respondent. Two(2) documents were marked as court documents. The Tribunal has awarded a sum of Rs.1,88,143/- as compensation.

5. Against the award, the second respondent preferred this appeal on the following grounds:

The driver of the vehicle owned by the first respondent, was not having valid driving licence and the same was proved by the appellant. The Tribunal failed to consider Ex.R1 and Ex.R2 and Ex.X1 and X2 in the proper



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perspective. The Tribunal failed to appreciate the evidence of R.W.3, an official from the Regional Transport officer. The Tribunal failed to consider that the Motor Vehicle Act does not permit renewal of expired driving licence from any other office of the transport department, without the concurrence of the original office of the transport department. The Tribunal is wrong in fixing the burden of proof on the part of the appellant. The competency of the driver to obtain driving licence, cannot be a valuable ground, for not having a driving licence. The appellant is not liable to indemnify the owner of the vehicle.

6.On the side of the appellant it is further stated that the Tribunal failed to consider the evidence of RW1 and Ex.R2. The Tribunal failed to consider that the renewal of the driving licence from some other office, is possible only after getting no objection certificate from the original transport office, where the original driving licence was issued. There was no driving licence. Hence, atleast pay and recovery order ought to have been granted.

7.On the side of the respondent it is stated that the burden is on the side of the appellant to prove that there was no driving licence. The Doctor has



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fixed the disability as 34% but without any reason, the Tribunal has reduced the disability to 30% and pray the award of the Tribunal to be confirmed.

8. On the side of the appellant, a judgment of this Court reported in **2020 (2) TN MAC 388** in the case of **United India Insurance Company Limited, Salem vs V.Vijayakumar and others**, is cited, wherein it is held as follows:

"Insurer discharged burden cast upon it establishing that driver not possessed a valid driving license to drive a Transport vehicle and that there was violation of policy condition - Contention that driver might have obtained badge elsewhere and same might not have been brought to the notice of M.V. Inspector - Held, not tenable, since as per Rule 35 a Licensing Authority renewing a driving licence under Section 15(6) shall intimate fact to Licensing Authority which issued driving licence in Form LR - Rule 36 makes clear that any additions made under Section 11 to classes of Motor Vehicles which a driving licence authorised holder to be intimated to Licensing Authority.

----- However, in view of the nature of injuries sustained by the Claimant, who is reduced to Vegetable existence, just and reasonable course would be to direct Insurer to pay and recover same from owner for breach of Policy Conditions."



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9.In Ex.P3, the validity of the driving licence was not mentioned. In the charge sheet Ex.P4, no additional charge was mentioned for the non availability of driving licence. A mere non-mentioning of the particulars as to the driving licence in the charge sheet and in the Motor Vehicles Inspector's report is insufficient to prove that the driver was having valid driving licence. R.W.3 has deposed that there was possibility for the driver of the first respondent vehicle to have obtained driving licence prior to 2006. From the evidence of R.W.3, it is clear that only after 15.06.2006, the records are computerized and that the other particulars prior to 2006 cannot be easily traced out. The second respondent remained ex-parte and the driving licence was not marked. Hence, it is decided that the appellant has to pay the compensation amount to the claimant and that the appellant is entitled to recover the amount from the owner of the vehicle. There is no other dispute regarding the quantum.

10.In the above circumstances, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.1,88,143/- (Rupees One Lakh Eighty Eight Thousand One hundred and



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Forty Three only) which shall carry interest at the rate of 7.5% per annum.

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(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.1,88,143/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.127 of 2010 on the file of Motor Accidents Claims Tribunal, (Sub Court), Pudukottai, within a period of eight weeks from the date of receipt of a copy of this order and the appellant is permitted to recover the same from the owner of the vehicle.

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ claimant is permitted to withdraw the entire award amount of 1,88,143/- (Rupees One Lakh Eighty Eight Thousand One Hundred and Forty Three only) with proportionate interest.

23.12.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal, (Sub Court), Pudukottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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