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C.M.A.(MD)No.1379 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.09.2021

Delivered On : 27.01.2022

CORAM

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

C.M.A.(MD)No.1379 of 2013

The Branch Manager,  
Royal Sundaram Alliance Insurance  
Company Ltd.,  
Sundaram Towers,  
45, 46, Whites Road,  
Chennai 600 014.

..Petitioner/Respondent 2

Vs.

1.Rengaraj

..Respondent/Petitioner

2.Tanston Joseph Vilbert

..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 31.10.2012 and made in M.C.O.P.No.159 of 2012 on the file of the Motor Accident Claims (Addl. District Court), Pudukkottai.

|                                |                           |
|--------------------------------|---------------------------|
| For Appellant                  | : Mr.S.Srinivasa Raghavan |
| For 1 <sup>st</sup> Respondent | : Mr.N.Balakrishnan       |
| For 2 <sup>nd</sup> Respondent | : No Appearance           |

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.159 of 2012 dated 31.10.2012, on the file of the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

2.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 claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.159 of 2012, claiming compensation for the injuries sustained by him, in an accident that took place on 08.07.2006. The Tribunal has awarded a sum of Rs.7,53,760/- (Rupees Seven Lakhs Fifty Three Thousand Seven Hundred and Sixty only) as compensation. Against which, the appellant has preferred this appeal.



3. Brief substance of the claim petition in M.C.O.P.No.159 of 2012 is as follows:

On 08.07.2006, at about 06.30 a.m., when the petitioner was travelling in minidor auto bearing registration No.TN-55-K-1861 as a worker, the auto driver drove the vehicle in a rash and negligent manner and the auto capsized. As a result, the petitioner sustained injuries. He was taken to Tanjore Medical College Hospital and took treatment from 08.07.2006 to 02.08.2006 as 'in patient'. The petitioner sustained permanent disability and prayed for a sum of Rs.10,00,000/- as compensation.

4. Brief substance of the counter filed by the first respondent therein is as follows:

The first respondent came to know about the accident through his Manager. The accident took place, when the petitioner was travelling in the auto to go to the company. The preliminary medical expenses were owned by the company. The petitioner was paid a sum of Rs.19,860/- till 22.01.2007 towards loss of earnings. The first respondent paid a compensation of Rs.50,000/- by way of demand draft on 19.09.2006. The claim is excessive.

5. Brief substance of the additional counter filed by the first respondent therein is as follows:

Since the petitioner has issued the receipt for having received the compensation as full and final settlement, he is estopped from claiming any other compensation.

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

The second respondent denied the age, income, nature of injuries, disability, medical expenses of the petitioner are all denied. The compensation claimed under various heads are high and without any basis. The manner of the accident stated in the petition is false. 15 unauthorized passengers travelled in the auto against the permitted capacity. The first respondent and his driver violated the policy conditions. The auto is a goods carrier. The seating capacity is '2' including the driver. As per FIR, 15 persons travelled in the goods carrier. The accident happened due to the overloading of passengers in the goods carrier. The driver of the first respondent did not possess any valid driving licence. The petition has to be dismissed against the second respondent.

7. On the side of the claimant, two witnesses were examined and 11 documents were marked. On the side of the respondents, five witnesses were examined and 55 documents were marked. After trial, the Tribunal has awarded a sum of Rs.7,53,760/- (Rupees Seven Lakhs Fifty Three Thousand Seven Hundred and Sixty only) as compensation to be paid by the second respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.



8.On the side of the appellant, it is stated that the auto driver was not having valid driving licence. The second respondent has examined R.W.5, One Manivannan, Junior Assistant from the office of RTO, Pudukkottai and that he has deposed that the driver Karaiarasan was not having valid driving licence from the date of computerization i.e., from 15.06.2006 and that he has issued 'no driving licence letter', which was marked as Ex.R54.

9.On the side of the appellant, it is stated that in a goods carrier, more than 15 passengers had travelled and the first respondent was one among the 15 passengers and he is not entitled for claiming compensation.

10.On the side of the first respondent, it is stated that R.W.3, Muthusamy the then Head Constable of Karnataka Police was examined. R.W.3 has deposed that eight persons sustained simple injuries. Three persons sustained grievous injuries in the accident. R.W.4 Vaitheeswaran was working as the Law Officer at the office of the second respondent. He has deposed that as per FIR and as per the investigation, they find out that 15 persons travelled in auto. The vehicle is only a load auto. Only two persons are eligible to travel in the vehicle. R.W.2 Junior Assistant from RTO, Pudukkottai has deposed that the vehicle involved in the accident is a load auto. No passenger can travel in the vehicle. Only two persons including the driver can travel in the vehicle. The copy of the R.C. Book was marked as Ex.R51 and as Ex.R55.

11.On the side of the first respondent, it is stated that the petitioner is an unauthorized passengers and that policy violations, the driver is not having valid driving licence and that the policy conditions are violated.

12.On the side of the first respondent, it is stated that if the policy conditions are violated, the insurance company can pay and recover the amount from the owner. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of **Anu Bhanvara Etc. v. Iffco Tokio General Insurance Company Limited and Others** in **Civil Appeal Nos.6231 and 6232 of 2019** is cited, wherein it is stated as follows:

"We have heard learned counsel for the parties and perused the records as well as the various decisions cited by learned counsel for the parties. The insurance of the vehicle, though as a goods vehicle, is not disputed by the parties. The claimants in the present case are young children who have suffered permanent disability on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the



*principle of "pay and recover" should be directed to be invoked in the present case."*

13.Ex.R53 is the driving licence for the auto. On the side of the appellant, it is stated that there was no badge endorsement and that the driving licence of the auto driver was not valid.

14.The law is well settled. Now no badge endorsement is necessary for an auto. In view of Ex.R53, it is decided that the auto driver was having valid driving licence at the time of accident.

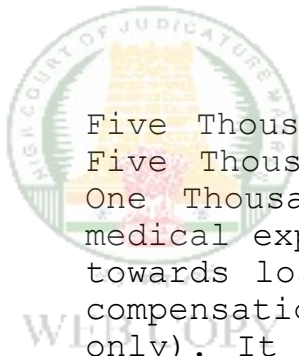
15.R.W.1, the manager of the first respondent has deposed that the appellant was working as a cleaner in the auto and he travelled along with the driver in the capacity of a cleaner. The other persons travelling in the auto had travelled in the body of the auto as unauthorized passengers and they have not filed any claim petition and the same was accepted by R.W.4 and the trial Court has held that the first respondent is not an unauthorized person as he worked as a cleaner who travelled in the cabin.

16.It is seen that in the evidence of R.W.3 and in Ex.P1, it stated that the so many persons travelled in the goods carrier and 11 persons sustained injuries. R.W.4 has admitted that except the first respondent, none of the injured filed any petition.

17.It is seen that the premium was paid for a cleaner. R.W.1 has admitted that the first respondent worked in his company and he travelled in the auto that belong to the company. Since the first respondent worked only in the company of the second respondent, the first respondent is entitled to get compensation.

18.P.W.2 Doctor Ravi has issued Ex.P11, disability certificate fixing the disability at 80%. Discharge summary was marked as Ex.P2. The AIR copy was marked as Ex.P3. The wound certificate was marked as Ex.P4. The inpatient chit was marked as Ex.P7. The photo of amputated left hand of the claimant was marked as Ex.P9. Xray was marked as Ex.P10. From the evidence of P.W.2 and from Ex.P2 to Ex.P4, Ex.P7, Ex.P9 to Ex.P11, it is clear that the left hand of the petitioner was amputated below the elbow and the Tribunal has fixed the disability at 70% which is reasonable.

19.It is seen that the monthly income of the appellant is mentioned as Rs.1,800/- (Rupees One Thousand and Eight Hundred only). The age of the petitioner is only 17 years at the time of accident. Considering the notional income and future prospects, the loss of monthly income is fixed as Rs.3,000/- per month. After applying multiplier '16', the loss of income is Rs.5,57,000/- (3000x12x16). The Tribunal has awarded a sum of Rs.32,000/- (Rupees Thirty Two Thousand only) for pain and suffering, Rs.5,000/- (Rupees



Five Thousand only) towards transport expenses, Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment, Rs.1,000/- (Rupees One Thousand only) towards loss of articles, Rs.5,000/- towards medical expenses, Rs.15,000/- towards loss of amenities, Rs.15,000/- towards loss of expectation of life which are reasonable. The total compensation is Rs.6,54,000/- (Rupees Six Lakhs Fifty Four Thousand only). It is seen that the first respondent has obtained a sum of Rs.69,860/- (Rupees Sixty Nine Thousand Eight Hundred and Sixty only) from the second respondent and the same is to be deducted. After deduction, the claimant is entitled to Rs.5,84,140/- (Rupees Five Lakhs Eighty Four Thousand One Hundred and Forty only) and the same is rounded off to Rs.5,85,000/- (Rupees Five Lakhs and Eighty Five Thousand only).

20.Hence, it is decided that the first respondent is entitled to a sum of Rs.5,85,000/- (Rupees Five Lakhs and Eighty Five Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

21.The appellant is directed to deposit Rs.5,85,000/- (Rupees Five Lakhs and Eighty Five Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent is permitted to withdraw the award amount with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MRN

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 Judge,  
Motor Accidents Claims Tribunal, Additional District Judge,  
Pudukkottai.

2.The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate ( SR-2672[F] dated  
27/01/2022 )

C.M.A. (MD)No.1379 of 2013  
**27.01.2022**

MGJ(29.03.2022) 6P 5C