



C.M.A.(MD)No.499 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.06.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.499 of 2012
and M.P.(MD)No.2 of 2012

National Insurance Company Limited,
1st Floor, Jerome Building,
Fort Station Road,
Trichy – 620 002.

.. Appellant/2nd Respondent

Vs.

1.C.Sekar	... 1 st respondent / petitioner
2.G.Chandrakanthan	... 2 nd respondent / 1 st respondent
3.P.S.Saravanan	... 3 rd Respondent / 3 rd respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor vehicles Act, 1988, against the judgment and award made in M.C.O.P.No. 71 of 2007, dated 09.10.2009, on the file of the Motor Accidents Claims Tribunal – Sub Court, Kulithalai.

For Appellant	: Mr.D.Sivaraman
For Respondents	: No appearance



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JUDGMENT

This Appeal is filed against the award made in M.C.O.P.No. 71 of 2007, dated 09.10.2009, on the file of the Motor Accidents Claims Tribunal – Sub Court, Kulithalai. The appellant herein is the second respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent and the third respondent herein is the third respondent in the main M.C.O.P petition.

2. Brief substance of the claim petition in M.C.O.P.No. 71 of 2007, is as follows:

On 09.11.2006 at about 9.40 pm., the petitioner was walking along the Karur-Trichy main road, near Priya Hospital, at that time, a motorcycle bearing Registration No.TN-47-M-7209 was driven by a rider in a rash and negligent manner, dashed against the petitioner from behind and caused him injuries. The petitioner sustained injuries and was admitted as inpatient and he sustained permanent disability. The petitioner claimed a sum of Rs.5,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent in M.C.O.P.No. 71 of 2007, is as follows:

The mode of the accident is denied. The rider of the two wheeler ride the vehicle in a careful and cautious manner along the left side of the road. It was the petitioner, who suddenly crossed the road and the petitioner is responsible for the accident. The rider of the two wheeler was not having valid driving licence, at the time of accident. The petitioner has to prove that the third respondent was the erstwhile owner of the vehicle. Since the third respondent was not the owner of the vehicle, at the time of accident, the second respondent is not liable to pay compensation. The amount claimed is excessive. The age, profession, income of the petitioner are denied.

4. On the side of the claimant, 2 witnesses were examined and 5 documents were marked. On the side of the respondents, 2 witnesses were examined and 7 documents were marked. After considering both sides, the Tribunal totally awarded a sum of Rs.86,500/- to be paid by the second respondent. Against the order, the appellant / Insurance Company has filed this appeal on the following grounds:-



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The Tribunal has failed to consider that the rider of the vehicle – Chandrakanthan was not having valid driving licence, at the time of accident. The Tribunal failed to consider this aspect while deciding the case. From the evidence of R.W.2, who is an official from R.T.O's office and from Ex.R4, it was well established that the rider did not have driving licence to drive two wheeler. The Tribunal has failed to know that in the petition, the third respondent was only mentioned as erstwhile owner and the first respondent was mentioned as the owner cum driver of the vehicle and in the Motor Vehicle Inspector's report as well as in the charge sheet, the first respondent was mentioned as the owner cum driver and the award is excessive.

5. On the side of the appellant, it is stated that the appellant has proved that the rider of the vehicle was not having valid driving licence, at the time of accident and that it is admitted that the third respondent is not the owner of the vehicle at the time of accident and prayed the order of the Tribunal is to be set aside.

6. From the evidence of R.W.2, it is clear that the first respondent was not having driving licence, to drive two wheeler. The first respondent



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has obtained driving licence only to drive light motor vehicle and heavy motor vehicle but, not a two wheeler.

7. Though in the petition, it was mentioned that the first respondent was the owner cum driver at the time of accident, the ownership was not transferred to the name of the first respondent. The Insurance goes along with the vehicle and hence, who ever be the owner, the appellant / Insurance Company is liable to pay compensation.

8. In view of the above discussion, it is decided that the Insurance Company has to pay the compensation amount as awarded by the Tribunal and the Insurance Company is at liberty to recover the amount from the owner of the vehicle. This Appeal is disposed of accordingly.

9. The appellant herein / Insurance Company is directed to deposit the compensation of Rs.86,500/- with accrued interest at the rate of 7.5% pa., and with costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the Tribunal may permit the claimant to withdraw the entire award amount, on filing of proper petition before the Tribunal, less any amount, if already



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withdrawn by him. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently, connected Miscellaneous Petition is closed.

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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 Motor Accidents Claims Tribunal – Sub Court,
Kulithalai.
- 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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Judgment made in
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