

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2022

Pronounced on : 30.09.2022

CORAM

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

C.M.A(MD)No.56 of 2012

in

M.P.(MD)No.1 of 2012

New India Assurance Co. Ltd.,
Through its Divisional Manager,
248B, Kamarajar Salai, Madurai.

... Appellant/2nd Respondent

Vs

1.Sekar
2.S.Sasikumar

... Respondent/Petitioner
... Respondent/ 1st Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 29.11.2010 passed in MACOP No.66 of 2007 on the file of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 : Mr.S.Balaji

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in MACOP No.66 of 2007, on the file of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai, dated 29.11.2010. The appellant herein is the second respondent. The 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 11.09.2006 at about 03.15 p.m., while the petitioner was travelling as a pillion rider in a motor cycle bearing Reg.No.TN-39-AC-7506 along the Tiruppur to Andipatti Road, a Van bearing Reg.No.TN-72-B-7755 came from the opposite direction in a rash and negligent manner and dashed against the petitioner. The petitioner sustained multiple injuries and he claimed a sum of Rs.3,00,000/- as compensation.

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

The accident has occurred only due to the rash and negligent driving of the rider of the motor cycle. The driver of the first respondent is not responsible for the accident. The claim and interest is excessive.

4.Four (4) witnesses were examined and Fourteen (14) documents were marked on the side of the petitioner. Two (2) witnesses were examined and four (4) documents were marked on the side of the first respondent. The Tribunal awarded Rs.1,79,086/- as compensation.

5.Against the award, the appellant/second respondent preferred this appeal on the following grounds;

The Tribunal is wrong in deciding that the appellant failed to discharge the burden of proving the absence of driving license. The Tribunal failed to consider the evidence of the officials from the RTO Office and also failed to consider that the owner of the vehicle remained *exparte*, the disability fixed by the Tribunal is excessive. The award is excessive.

5.1.On the side of the appellant, it is further stated that when notice was sent to the owner of the vehicle to produce the driving license and when the owner failed to produce the same, adverse inference can be drawn against the owner. The Judgment of the Hon'ble Division Bench of this Court reported in ***2021 (2) TN MAC 23 (DB) in United Indian Insurance Company Limited Vs. G.Amutha and others***, is cited.

6.On the side of the owner of the vehicle, it is stated that there is insurance coverage for the vehicle, the appellant failed to prove that there was no driving license for the driver of the van.

7.It is seen that the First Information Report was registered against the driver of the van. From the evidence of P.W.1 and from Ex.P.1, the Tribunal had fixed the liability on the driver of the van. It is seen that notice was sent to the owner of the vehicle, which were marked as Ex.R.1 and Ex.R.2. It is seen that though notice was sent to the owner of the vehicle and he received the same, he failed to send a copy of the driving license to the Insurance Company. R.W.1 and officials from the RTO were examined on the side of

the second respondent, to prove that the driver of the vehicle was not having valid driving license at the time of accident. The Tribunal is wrong in deciding that the appellant has not taken steps to prove the non-availability of driving license. Hence, it is decided that the driver of the vehicle was not having valid driving license.

8.On the side of the appellant, it is further stated that the Tribunal had awarded partial loss of earning for a period of six months at the rate of 3,000/- per month, which is excessive. The claimant sustained 50% of the injury. Hence, for the period of treatment and for the period of rehabilitation, the petitioner is entitled to loss of income for a period of six months, which is very reasonable. The Tribunal has awarded Rs.9,400/- towards transport expenses. Rs.8,000/- towards extra nourishment. Rs.53,686/- towards medical expenses. Rs.10,000/- towards pain and suffering, which are all reasonable. The Tribunal has awarded Rs.80,000/- towards compensation for partial disability.

9.On the side of the claimant, no cross objection was filed. No appeal for enhancement was filed.

10.In view of the above circumstances, it is decided that the amount awarded by the Tribunal, is reasonable.

11.For the reasons stated above, it is decided that the Insurance Company has to pay the claimant and the Insurance Company permitted to recover the same from the owner of the vehicle and that the order of the Tribunal is to be modified.

12.Accordingly, the award of the Tribunal is modified to the effect that the appellant/New India Assurance Company Limited has to deposit the entire award amount Rs.1,79,086/- (Rupees One Lakh Seventy Nine Thousand and Eighty Six only) at the first instance to the credit of M.A.C.O.P.No.66 of 2007, on the file of the Motor Accidents Claims Tribunal, IV Additional Sub Judge, Madurai, less any amount already deposited, along with accrued interest at the rate of 7.5% per annum from the date of petition till date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this Judgment and then to recover the same from the owner of the vehicle bearing Registration No.TN-72-B-7755.

13.On such deposit being made, the first respondent/claimant is entitled to withdraw the award amount, less any amount already withdrawn, with interest and cost by making necessary application before the Tribunal. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.09.2022

Index: Yes / No

Internet : Yes / No

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To

1.The Motor Accidents Claims Tribunal (IV Additional Sub Judge),
Madurai.

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

C.M.A(MD)No.56 of 2012

R.THARANI, J.

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**Pre - Delivery Judgment made in
C.M.A(MD)No.56 of 2012**

30.09.2022