



C.M.A(MD)No.966 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.966 of 2009

S.Pandurengan

... Appellant

vs.

1.Subbaiah

2.The Divisional Manager,
Oriental Insurance Company,
108, T.P.K Road,
Madurai-625 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair order and decretal order made in M.C.O.P.No.36 of 2005, dated 14.08.2009 on the file of Motor Accident Claim Tribunal, Paramakudi.

For Appellant : Mr.R.Murali

For R2 : Mr.C.Jawahar Ravindran



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellant / claimant against the award, dated 14.08.2009, made in M.C.O.P.No.36 of 2005, on the file of the Motor Accident Claim Tribunal, Paramakudi.

2. The case of the claimant, in nutshell, is as follows:

On 10.01.2004 at about 11.00 p.m, when the appellant was proceeding to his house from east to west, after closing his grocery shop, in Madurai-Mandapam, National Highways, in the opposite direction, a Two wheeler bearing registration No.TN-59-D-2885 driven by one Sekar in a rash and negligent manner without sounding horn, dashed against the appellant. In the impact, he sustained multiple injuries. Immediately, he was taken to Government Hospital, Paramakudi. Subsequently, he was transferred to Rajaji Government Hospital, Madurai. Thereafter, he was taken for treatment in Apollo Hospital. Alleging that the accident had happened due to the rash and negligent driving of the rider of the two wheeler, the appellant filed a claim petition claiming compensation of Rs.5,00,000/-.

3.The owner of the Two Wheeler remained absent before the



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Tribunal and therefore he was set exparte. The Oriental Insurance Company contested the claim petition on all the grounds available to the insured.

4.Before the Tribunal, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and twenty three documents were marked as Exs.P.1 to P.23. On the side of the Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and four documents were marked as Exs.R.1 to R.4 and also three documents Ex.X1 to Ex.X3 were marked through Court.

5.The Tribunal, on appreciation of evidence adduced by the claimant, found that the rider of the two wheeler caused the incident and awarded compensation of Rs.1,77,177/- with interest at the rate of 7.5% per annum. Aggrieved over the same, the present appeal has been filed.

6. The learned counsel appearing for the appellant/claimant contended that the vehicle involved in the accident namely TVS Victor bearing Registration No.TN-59-P-2885, which is insured with the second respondent itself is sufficient to fasten the liability on the second



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respondent. The driver of the vehicle is possessing valid license for driving four wheelers and hence, separate license for two wheelers need not be necessary. Therefore, the trial Court had erred in holding that the second respondent is not liable to pay the compensation on the ground that the driver of the vehicle is not possessing valid driving licence as on that day. He further submitted that the Tribunal has awarded a meagre amount without considering the Doctor's evidence in respect of percentage of disability sustained by the claimant. Therefore, he prayed for enhancement of compensation and also 'pay and recovery' may be ordered by this Court.

7. Per Contra, the learned counsel appearing for the second respondent / Insurance Company contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.1,77,177/- together with interest at the rate of 7.5% per annum and directed the owner of the vehicle to pay the compensation to the claimant and the same need not be disturbed at this stage.

8. 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



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are not in dispute. On the question of liability, it is seen that, at the time of the accident, the rider of the two wheeler has not possessed valid driving licence. The law is now well settled that merely because the driver of the vehicle has no valid driving licence at the time of the accident, the Insurance Company cannot get rid of its liability, however, this Court is of the view that after paying the compensation amount to the claimant, the Insurance Company can recover the amount from the owner of the vehicle.

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

10. Insofar as the quantum is concerned, after considering both oral and documentary evidence, the tribunal has awarded the compensation under the various heads. On going through the award passed by the tribunal, this Court finds that the award is just and



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reasonable and therefore, the contention of the learned counsel appearing for the appellant that the compensation awarded by the Tribunal is meagre could not be accepted. In view of the above, the plea raised by the appellant stands negatived. Therefore, the compensation awarded by the Tribunal is hereby confirmed.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The award and decree dated 14.08.2009 made in MCOP No.36 of 2005, on the file of the Motor Accidents Claims Tribunal, Paramakudi, is modified. The quantum of compensation and the rate of interest fixed by the Tribunal as 7.5% per annum are confirmed. The second respondent/Insurance Company is directed to deposit the award amount along with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order at the first instance and thereafter, to recover the same from the first respondent/insured. On such deposit being made, the appellant / claimant is permitted to withdraw the same following due process of law. No costs.

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Index :Yes/No
Internet :Yes/No
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WEB COPY To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN,J.

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JUDGMENT MADE IN
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