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C.M.A.No.3536 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3536 of 2010 and
M.P.No.1 of 2010

The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Bharathy Road,
Cuddalore – 1.

... Appellant

Vs.

1. A.Shanthi
2. B.David

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.06.2010 passed in M.A.T.C.O.P.No.437 of 2005 on the file of the Motor Accident Claims Tribunal, Cuddalore / First Additional Sub Judge, Cuddalore.

For Appellant : Mr.R.Sivakumar

For Respondent : No appearance [R1 & R2]

JUDGEMENT

The Civil Miscellaneous Appeal is filed against the award and decree dated 18.06.2010 passed in M.A.T.C.O.P.No.437 of 2005 on the



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file of the Motor Accident Claims Tribunal, Cuddalore / First Additional
Sub Judge, Cuddalore.

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2. It is the case of the appellant that on 31.12.2004 when the first respondent / claimant travelled as a pillion rider bearing registration No.TN 31 A 7228 which was driven by one David who is the second respondent herein, the said rider of vehicle drove the vehicle in a rash and negligent manner in order to avoid the person who was coming in the opposite direction, when the rider of the vehicle tried to apply brake, the claimant was thrown out of the vehicle, thereby he sustained injuries for which the claimant was admitted in hospital and taken treatment. Therefore, claiming compensation the claim petition was filed by the claimant.

3. Before the Tribunal the claimant examined herself as P.W.1 and Doctor was examined as P.W.2 and marked exhibits P.1 to P.12. On the side of respondents R.W.1 and R.W.2 were examined and marked exhibit P.1. on their behalf. On the basis of the oral and documentary evidences, the award was passed to the tune of Rs.2,97,660/- together with accrued



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interest and directed the appellant / insurance company to pay the same and thereafter recover it from the owner of the vehicle. Aggrieved by the same, the present appeal has been filed.

4. The learned counsel for the appellant submits that the rider of the vehicle was not possessed with a valid driving licence. Therefore, the insurance company is not liable to pay the compensation as per the terms of policy of insurance. He further submits that it is only due to the rash and negligent driving of the rider of the vehicle, the said accident happened. Hence, the insurance company cannot be liable to be made to pay the compensation to the owner of the vehicle. However, the other heads awarded by the Tribunal are also excessive and the same requires interference.

5. Though the name of the respondents appeared in the cause list, no one appeared on behalf of the respondents, however considering the pendency of the period of the appeal, this Court is inclined to dispose of the same based on the materials available on record.



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6. Heard the learned counsel for the appellant and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / insurance company is with regard to non possession of valid driving licence by the rider of the vehicle. In order to substantiate the same, the appellant / insurance company had marked exhibit R.1 to show that the rider does not possess valid driving licence. The said document has been accepted by the Tribunal, the Tribunal on the basis of oral and documentary evidences has come to a conclusion that the accident had happened due to the rash and negligent driving of the rider of the two wheeler. Therefore, definitely the insurance company has to indemnify the claimant for the injuries suffered by him in the accident on behalf of the rider. However, the Tribunal has rightly directed the insurance company to pay the compensation to the claimant and thereafter recover the said amount from the owner of the vehicle. The said finding is not only based on the materials available on record but also it is in tune with the benevolent nature of the duty of the insurance



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company to compensate the claimants in case of an accident.

8. Therefore, the finding with regard to the negligence that the insurance company has the liability to pay the compensation does not require any interference. Insofar as the compensation awarded under other heads are concerned, though it is submitted that the compensation is excessive, on a careful perusal of the same reveals that the compensation awarded are in tune with the compensation which has to be awarded in case of injuries sustained by a person in the accident. The Tribunal has taken note of various decisions and has awarded the compensation in favour of the claimant which are just and reasonable.

9. In view of the reasons aforesaid, the appeal is dismissed by confirming the order passed by the Tribunal in M.A.T.C.O.P.No.437 of 2005 dated 18.06.2010. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.10.2023

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Index : Yes / No

Speaking order / Nonspeaking order

Netrual Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

1. The Motor Accident Claims Tribunal, Cuddalore.
2. The Section Officer, V.R.Section, High Court, Madras.

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