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C.M.A.No.202 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM

THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.202 OF 2013

AND

MP. No.1 OF 2013

National Insurance Company Limited
Having its Branch Office at
City Branch IV
Sathy Road, Gandhipuram,
Coimbatore – 12.

... Appellant

..Vs..

1.R.Senthilkumar
2.Vignesh
3.N.Palanisamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2011 made in MCOP.No.58 of 2009 on the file of Motor Accident Claims Tribunal (Principal Subordinate Judge) Coimbatore.

For Appellant	:	Mr.K.Padmanabhan
For Respondent-1	:	Not claimed
For Respondents 2&3	:	Exparte



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 16.09.2011 made in M.C.O.P.No.58 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Coimbatore, by the Insurance Company.

2.For the sake of convenience, the parties are called as per their ranking before the Motor Accident Claims Tribunal.

3.The petitioner is the injured. The first respondent is the driver and the second respondent is the owner of the vehicle. The third respondent is the Insurance Company. On 19.02.2008, at about 08.00 a.m., when the petitioner went to Ayyappan Temple, Siddhapudur and waited opposite to the said Temple, the two wheeler, belonging to the second respondent, bearing Registration No.TN-38- AQ-4177 driven by the first respondent in a rash and negligent manner, hit the petitioner and thereby, the petitioner fell down and sustained injuries. Therefore, all the respondents viz., driver, owner and Insurance Company are liable to pay compensation to the



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petitioner. Claiming compensation of a sum of Rs.3,00,000/-, the petitioner/claimant has filed a petition in MCOP.No.58 of 2009 before the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Coimbatore.

4.Controverting the same, the third respondent / Insurance Company has filed a counter affidavit denying the allegations made by the petitioner. It was stated that the first respondent is not having valid driving license at the time of accident. Further, the injuries sustained by the petitioner was also not proved through valid documentary evidence and thus, sought for dismissal of the claim petition.

5.Before the Tribunal, on the side of the petitioner, the petitioner examined himself as P.W.1 and 9 documents were marked as Exs.P1 to P9. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and 4 documents were marked as Exs.R1 to R4.



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6.The Tribunal, after examining the witnesses and analyzing the materials available on record, awarded a compensation of Rs.88,441/- (Rupees Eighty Eight Thousand Four Hundred and Forty One Only) payable by the third respondent / Insurance Company with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with costs.

7. Challenging the quantum of compensation, the third respondent / Insurance Company has filed the present Civil Miscellaneous Appeal.

8. Heard the submissions made on either side and perused the materials available on record.

9. Before the Court below, the respondents 2 and 3 herein were set *exparte*.



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10.The learned counsel for the appellant / Insurance Company

has submitted that the Tribunal was not justified in holding that the appellant herein also liable to pay compensation to the claimant. Even though the second respondent has no valid license, the third respondent / owner allowed the first respondent to drive the vehicle, which amounts to willful breach of terms and conditions. When the documents including oral evidence established that the second respondent did not possess valid driving license, the Tribunal ought not to have made the appellant herein also liable to pay compensation to the first respondent. The Tribunal should have ordered pay and recovery based on the principles laid down by the Hon'ble Apex Court in ***NATIONAL INSURANCE COMPANY VS. SWORN SINGH AND OTHERS [AIR 2004 SC 1531]*** wherein it is observed that the insured has to pay damages to the 3rd party / injured even if the accident causing vehicles driver did not possess valid driving license on the date of occurrence and that the insurer can recover from the insured. The findings of the Tribunal in holding that the appellant also liable to pay compensation on the issue of liability is unsustainable in law and liable to be set aside and thus, sought to allow the Civil Miscellaneous Appeal.



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WEB COPY 11. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the second respondent vehicle. Though the vehicle is properly insured and having insurance policy on the date of accident, the Insurance Company denied its liability on the ground that the involvement of the first respondent's vehicle is not established. Hence, the Insurance Company is not liable to pay any compensation to the petitioner.

12. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal has rightly fixed liability on the third respondent / insurance company to pay compensation to the petitioner and awarded an overall compensation of Rs.88,441/- with interest at 7.5 % p.a., from the date of petition till the date of deposit. Therefore, this Court is not inclined to interfere with the judgment and decree passed by the Tribunal.



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13. In view of the foregoing reasons, the Civil Miscellaneous

Appeal is liable to be dismissed and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.03.2023

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
gv

To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge)
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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gv

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