



C.M.A.No.1364 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1364 of 2018

and

C.M.P.No.10946 of 2018

The Divisional Manager,
United India Assurance Company Limited,
Jawaharlal Nehru Street,
Puducherry.

... Appellant

Vs.

1. Selladurai

2. S.K.Karunakaran

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the award and decree dated 20.12.2017 made in M.C.O.P.No.183 of 2009 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), (FAC) at Puducherry.

For Appellant : Mr.A.Dhiraviyanathan

For R1 : Mr.R.Mugundhan

For R2 : Notice returned with endorsement
"No such person"



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the award and decree dated 20.12.2017 passed in M.C.O.P.No.183 of 2009 on the file of the III Additional District Court, Motor Accidents Claims Tribunal, Puducherry.

2. The first respondent herein is the claimant, who filed the claim application in M.A.C.T.O.P.No.183 of 2009 on the file of the III Additional District Judge, Motor Accidents Claims Tribunal, Puducherry. After trial, the Tribunal awarded sum of Rs.3,44,644/- as compensation to the claimant. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal before this Court.

3. The case of the claimant is that on 01.09.2008 at 17.15 hours, when the claimant was proceeding in Yamaha Motor Cycle bearing Registration No.PY-01-L-9151 from his house to Puducherry, a bus



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bearing Registration No.PY-01-AP-9499, driven by its driver in a rash and negligent manner, dashed against the motor cycle, due to which, the claimant sustained grievous injuries. The second respondent herein is the owner of the bus (offending vehicle) is insured with the appellant/Insurance Company.

4. Learned counsel for the appellant/Insurance Company has submitted that there is no valid permit for the offending vehicle at the time of accident and hence, due to violation of policy condition, the Insurance Company need not pay the compensation to the claimant as awarded by the Tribunal. At the best, the claimant is entitled to get the compensation from the owner of the vehicle, who is the second respondent herein. He further submitted that the first respondent/claimant has not proved that the driver of the insured vehicle was the tort-feaser, and hence, in the absence of the same, the Tribunal wrongly awarded the compensation, which warrants interference of this Court.



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5. Learned counsel for the first respondent/claimant submitted that, the Insurance Company had not stated anything in the counter, regarding the possession of valid permit of the insured vehicle. Further, the Tribunal has rightly appreciated the entire materials placed on record and the insured vehicle was having valid permission to ply on the permitted road. There is no violation of policy condition and also the vehicle was insured with the appellant/Insurance Company. The appellant/Insurance company has not denied that the offending vehicle was insured with the appellant/Insurance company. Though the Tribunal has rightly appreciated the evidence, however, the Tribunal has awarded “just compensation”. However, the first respondent/claimant has not filed any appeal or cross objection before this Court. Therefore, there are no words for arguing on the quantum of compensation.

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.



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7. The only point for consideration is as to whether the second respondent herein/owner of the vehicle has violated any one of the conditions of the policy.

8. The accident is not in dispute and the Insurance of the vehicle is also not in dispute. The only dispute is that at the time of accident, whether the insured vehicle was having valid permit or not to ply on the road.

9. The quantum of compensation awarded by the Tribunal is not challenged by the first respondent/claimant before this Court and hence this Court does not traverse beyond the scope of the appeal with regard to the quantum of compensation.

10. The appellant/Insurance Company has not taken any defence in the counter regarding the valid permit. At the time of evidence, the appellant/Insurance Company has taken a stand that the offending vehicle was not permitted to ply on the road. The vehicle was permitted



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to ply on the road, from the year 2006 to 2010. The accident took place on 01.09.2008. On a perusal of Ex.P3, it is seen that there was a valid permit for the offending vehicle at the relevant point of time. Therefore, the grounds taken by the appellant's counsel in the appeal are liable to be rejected.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed with costs. The appellant/Insurance Company is directed to deposit the entire award amount along with accrued interest as awarded by the Tribunal including costs, less the amount if any already deposited, within a period of one month from the date of receipt of copy of this judgment, failing which, the appellant/Insurance Company is directed to pay the compensation amount with default interest at the rate of 3%, in addition to the interest awarded at 7.5% by the Tribunal. Consequently, connected miscellaneous petition is closed.

24.07.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

The III Additional District Judge (FAC),
Motor Accidents Claims Tribunal,
Puducherry.



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P.VELMURUGAN, J.

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