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CMA Nos.2858 & 2860 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2022

PRONOUNCED ON : 11.01.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA Nos.2858 & 2860 of 2022

CMA No.2858 of 2022

Mr.R.Murugavel

... Appellant

vs.

1. Smt.Parvatham

2. Mr.Dharmaraj

3. Iffco-Tokio General Insurance Company Ltd.,
Tulsi Chambers, 3rd Floor,
T.V.Samy Road (W),
R.S.Puram, Coimbatore – 641 002.

... Respondents

CMA No.2860 of 2022

Mr.R.Murugavel

... Appellant

vs.

1. N.Vignesh

2. Iffco-Tokio General Insurance Company Ltd.,
Tulsi Chambers, 3rd Floor,
T.V.Samy Road (W),
R.S.Puram, Coimbatore – 641 002.

... Respondents



Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common award and decree, dated 22.12.2017 made in M.C.O.P.Nos.291 and 420 of 2014 on the file of Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam, Erode.

For Appellant in both CMAs	: Mr.R.Venkatesan
For Respondents CMA 2858 of 2022	: Mrs.Elizabeth Ravi (for R1 & R2) Mr.B.Siva Kollappan (for R3)
CMA 2860 of 2022	Mr. B.Siva Kollappan (for R2)

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are filed by one R.Murugavel, who is the owner of the offending vehicle viz., two wheeler bearing Regn.No.TN37-AY1645.

2. MCOP Nos.291 of 2014 and MCOP Nos.420 of 2014 are filed by the respective claim petitioners. The claim petitioner/1st respondent in CMA No.2860 of 2022, who was injured in the road accident on 13.07.2014 has filed MCOP No.291 of 2014, claiming compensation for the injuries



sustained by him in the said accident, while MCOP No.420 of 2014 was filed by the legal representatives of Madan Kumar, who died in the said accident.

3. The case before the claims tribunal is that on 13.07.2014 at about 9.45am, the claim petitioner-Vignesh was moving on towards Kuppanoor Aiyyasamy Koil in his two wheeler bearing Regn.No.TN99-4269 along with his friend Madan Kumar, the pillion rider and at that time, a two wheeler bearing registration No.TN37-AY-1645 came from South, dashed against them and caused the accident, in which the claim petitioner-Vignesh/1st respondent in CMA No.2860 of 2022 and Madan Kumar sustained grievous injuries and subsequently, Madan Kumar succumbed to injuries.

4. Before the claims tribunal, on the side of the claimants, mother of the deceased Madan Kumar/pillion rider, was examined as PW1 and the injured claimant-Vignesh was examined as PW2 and Ex.P1 to Ex.P26 were marked. On the side of the respondent-insurance company, one Nandhakumar, Assistant, was examined as RW1 and Insurance Policy was marked as Ex.R1. For the injuries sustained, the claim petitioner in MCOP No.291 of 2014 viz., Vignesh appeared before the Medical Board and



Ex.C1-Disability certificate issued by the Medical Board, was marked.

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5. On analysis of oral and documentary evidences, the claims tribunal vide its common judgment dated 22.12.2017, awarded a sum of Rs.1,56,061/- as compensation to the injured/claimant in MCOP No.291 of 2014 and for the death of Madan Kumar, the claims tribunal awarded a sum of Rs.15,00,000/- as compensation to his legal representatives in MCOP No.420 of 2014.

6. Before the claims tribunal, it was claimed that on the date of the accident, the rider of the offending two wheeler TN37 AY 1645 was not having driving licence. The tribunal based upon Ex.R1 and other documentary evidences, found that on the date of the accident, the rider of the offending vehicle did not possess any driving licence, besides he was a minor and accordingly, held that the insurance company is not liable to pay the compensation. However, following the judicial decisions, has directed the insurance company to pay the award and to recover the same, from the owner of the offending vehicle.



7. Aggrieved against such finding and direction of 'pay and recover', the owner of the offending vehicle has filed these appeals i.e. CMA Nos.2858 and 2860 of 2022.

8. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondent-Insurance company.

9. The learned counsel for the appellant would contend that 'pay and recover' ought not to have been ordered by the tribunal and the rider of the two wheeler, was acquitted by the criminal Court.

10. The records reveal that the appellant herein has not filed any counter before the claims tribunal and he was set exparte as could be seen from paragraph No.2 of the impugned judgment and the appellant who was set exparte before the tribunal has filed these Civil Miscellaneous Appeals. No document has been filed to show that the rider of the offending vehicle is having a valid driving licence, on the date of the accident and hence, the 'pay and recover' ordered by the claims tribunal is in consonance with the law laid down by the Hon'ble Apex Court in *National Insurance Co., Ltd., Vs.*



Swaran Singh and others reported in **2004(I)TNMAC104(SC)**.

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11. Therefore, this Court finds no error or mistake in the judgment dated 22.12.2017 made in MCOP Nos.291 and 420 of 2014 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sathyamangalam, Erode and hence, the same is confirmed.

12. In the result, both the Civil Miscellaneous Appeals are dismissed.

No costs.

11.01.2023

Index :Yes/No

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To

The Motor Accidents Claims Tribunal
(Subordinate Judge), Sathyamangalam,
Erode.

RMT.TEEKAA RAMAN, J,



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Pre-delivery common judgment in
CMA Nos.2858 & 2860 of 2022

11.01.2023