# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE P. VELMURUGAN**

C.M.A. No. 1492 of 2018
and
C.M.P.No.11831 of 2018

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M/s. The Oriental Insurance Company Limited,
No.72, D.Balasundaram Road,
ATT Colony, Coimbatore. ... Appellant

Versus

1.G.Mallika
2.S.Pradeep
3.P.R.Kumarasamy
4.United India Insurance Company Limited,
D.O.No.170100, Bank of Baroda Building,
4th Floor, State Bank Road,
Coimbatore – 641 018. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.787 of 2012, dated 04.03.2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr. M.J. Vijayaraghavan
For Respondents : No appearance
for R1 to R3
Mr.J.Chandran for R4

**JUDGMENT**

Challenging the award dated 04.03.2017 passed in M.C.O.P. No. 787 of 2012 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore, the Oriental Insurance Company Limited, has filed the above Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The case of the claimant/first respondent herein before the Tribunal was that on 24.12.2008, after finishing the office work, she was proceeding to her residence by Government Vehicle bearing Registration No.TN-04 G-0468. She got down near the Flower Market at R.S.Puram to reach Padiyur Co-operative Society to attend her personal work. When the claimant was standing on the edge of the road in front of Padiyur Co-operative Society, a Motor cycle bearing Registration No.TN C 6719, came in the South to North direction, driven by the first respondent in the claim petition in a rash and negligent manner and dashed her and went ahead by violating the Motor Vehicles Act and Rules. However, the driver of the vehicle in which claimant travelled had noted down the registration number of the Motor cycle driven by

the first respondent in the claim petition. Due to the said impact, the claimant sustained injuries and was admitted in NM Hospital, Sowripalayam Pirivu, Ramanathapuram, Coimbatore for treatment.

4. It is the further case of the claimant that she was working as Additional Judicial Member, Sub-Judge Appellate Tribunal, Commercial Taxes, Coimbatore and earned a sum of Rs.30,000/- per month. Thus, she made a claim for a sum of Rs.5,00,000/- as compensation.

5. Resisting the claim petition, The Oriental Insurance Company Limited/appellant herein and United India Insurance Company Limited/fourth respondent herein have filed their counter statements before the Tribunal disputing the manner of accident, age, avocation, income of the claimant and their liability to pay the compensation.

6. To substantiate the case, the claimant examined herself as P.W.1 and the Doctor was examined as P.W.2 and Exs. P1 to Ex.P12 were marked. On the side of the third respondent, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R6 were marked. On the side of the fourth respondent, R.W.3 was examined and Ex.R7 and Ex.R8 were marked.

7. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.82,000/- along with interest at 7.5% per annum from the date of claim petition till the date of realisation with proportionate costs and directed the Respondent 2 (owner of the two wheeler) and respondent No. 4 (appellant herein) to jointly and severally pay compensation to the claimant. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

| ***S.No.*** | ***Compensation awarded by the Tribunal under the heads*** | ***Amount in Rs.*** |
|---|---|---|
| 1. | 18% permanent disability<br>(18% x 2500 = 45,000/-) | 45,000 |
| 2. | Pain and Suffering | 25,000 |
| 3. | Transportation to Hospital | 5,000 |
| 4. | Extra Nourishment | 5,000 |
| 5. | Damages to clothing | 2,000 |
| | **Total** | 82,000 |

8. Challenging the above award of compensation, the appellant/ Oriental Insurance Company Limited has filed the present Civil Miscellaneous Appeal.

9. The learned counsel for the appellant/Oriental Insurance

Company Limited has submitted that, on the date of accident, the Motor cycle bearing Registration No. TN C 6719 was not insured with the appellant. Further, the claimant has not furnished the details of the accident, R.C book, Driving licence and insurance particulars, insurance coverage available on the date of accident etc., and therefore, the direction issued by the Tribunal to the appellant to pay compensation is unsustainable. In any event, there is no insurance coverage available to the offending vehicle driven by the first respondent in the claim petition and owned by the second respondent in the claim petition.

10. The learned counsel for the appellant/Oriental Insurance Company Limited, further submitted that the offending vehicle was insured with the fourth respondent herein and they issued policy for the period from 05.06.1995 till cancellation of the registration of the vehicle. However, the registration of the vehicle expired on 07.03.1995 and the same has not been renewed till the date of accident. The accident took place on 24.12.2008 i.e., 13 years after cancellation of the R.C. Therefore, the appellant is not liable to pay any compensation due to the accident of the offending vehicle. Therefore, the appellant is not liable to pay any compensation and the Tribunal has erroneously held that the appellant is liable to pay compensation.

11. The learned counsel for the fourth respondent/United India Insurance Company Limited submitted that, in the claim petition, they have been wrongly impleaded as a party. After trial, the fourth respondent herein was exonerated from the liability. Knowing fully well that the fourth respondent has nothing to do either with the claim petition, nor in the appeal, the appellant/claimant has wrongly impleaded them as a party in the present appeal, Therefore, he prayed that the present appeal may be dismissed as against the fourth respondent. It is for the claimant to prove that there was an insurance coverage available to the offending vehicle with the appellant, but she failed to prove it.

12. Heard the learned counsel for the appellant and the learned counsel for the fourth respondent and perused the records. Despite service of notice, respondents 1 to 3 have not chosen to enter appearance either through a counsel or in person.

13. This Court, as appellate Court, and so also, this Court being a fact-finding Court, had analysed the issue independently and re-appreciates the evidence to render an independent finding.

14. One of the officers of the fourth respondent/Insurance Company was examined as R.W.2 and a copy of the insurance policy was marked as Ex.R3. Ex.R3/Insurance Policy clearly shows that the offending vehicle was insured with the appellant only on the date of expiry of insurance till the cancellation of the registration of the vehicle. It means that, it is a permanent insurance. Therefore, till the cancellation of the vehicle, the insurance is covered. Ex.R2 clearly shows that the registration of the vehicle expired on 07.03.1995 and no F.C was taken for that vehicle. Therefore, the same was cancelled in the year 1995, itself. However, the accident had happened only on 24.12.2008.

15. On a perusal of the records, it is seen that, on the date of the accident, the offending vehicle was not insured with the appellant. No materials are produced to establish that the appellant is the insurer of the offending vehicle. In the absence of the same, the appellant is not liable to pay any compensation. The Tribunal failed to consider the validity of the insurance coverage with the appellant as on the date of accident. The Insurance policy was not in force on the date of accident. Therefore, the appellant is not liable to indemnify the loss caused by the owner of the vehicle to the claimant. Further, neither the claimant nor the owner of the vehicle, filed appeal or

cross objection. It is further seen that on the date of accident, the offending vehicle was not insured with the appellant/Oriental Insurance Company Limited.

16. In view of the above, this Civil Miscellaneous Appeal is allowed by setting aside the award and decree passed in M.C.O.P.No.787 of 2012, insofar as the fixation of liability on the appellant/Insurance Company is concerned. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

17. The owner of offending vehicle namely the second respondent in the claim petition, is directed to deposit the entire award amount along with 7.5% interest from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimant in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with

interest and costs. The appellant/The Oriental Insurance Company Limited, is permitted to withdraw the amount, if any, already deposited.

18. Though the Tribunal exonerated the fourth respondent, the appellant/The Oriental Insurance Company Limited has wrongly impleaded the fourth respondent without any valid reasons and hence, the appellant is directed to pay exemplary costs of Rs.50,000/- (Rupees fifty thousand only) to the fourth respondent.

**01.08.2023**

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal,
   Special Subordinate Judge,
   Coimbatore.

2.The Section Officer,
   V.R.Section,
   High Court, Madras.

**P.VELMURUGAN, J.**

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**C.M.A.No.1492 of 2018**

**01.08.2023**