



C.M.A.No.1268 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1268 of 2023

L.Desapattu

... Appellant

Versus

1.Babu

2.United India Insurance Co. Ltd.,
Motor Third Party Claim,
No.134, Greams Road,
Silingi Building,
Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.11.2019 passed in M.C.O.P.No.6194 of 2013, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya

For R2 : Mr.J.Michael Visuvasam



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JUDGMENT

The appellant/claimant aggrieved by the finding of the Tribunal in fixing the entire liability on the 1st respondent and exonerating the 2nd respondent from the liability has filed the instant appeal.

2.The appellant had filed the claim petition stating that on 09.02.2013, at about 08.30 hrs, while he was walking on a public road, the motorcycle belonging to the 1st respondent ridden by its rider in a rash and negligent manner, dashed against the appellant and as a result of which, the appellant sustained grievous injuries and hence, he was entitled to the compensation of Rs.6,00,000/-.

3.The 1st respondent – owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent resisted the claim petition and stated that the rider of the motorcycle, which was insured with the 2nd respondent was a minor and did not possess valid driving license and hence, the 2nd respondent is not liable to pay any compensation; that in any case, the



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quantum of compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

5.The appellant examined himself as P.W.1 and marked Exs.P1 to P14. The 2nd respondent neither examined any witness nor marked any document. The disability certificate issued by the Medical Board for the appellant was marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence held that the accident took place due to the rash and negligent riding by the rider of the vehicle insured with the 2nd respondent. Since the rider was minor and he did not have valid driving license, the Tribunal directed the 1st respondent to pay the entire compensation of Rs.2,84,870/- and exonerated the 2nd respondent from paying compensation.

7.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for; that however, the appellant is aggrieved by the finding of the Tribunal that the 2nd respondent is not liable to pay



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compensation; that the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay the compensation amount with liberty to recover the same from the 1st respondent since it is only a breach of policy condition.

8.Since the 1st respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellant requested this Court to dispense with notice to the 1st respondent and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent per contra submitted that since the rider of the motorcycle insured with the 2nd respondent was minor and the tortfeasor, the Tribunal had rightly exonerated the 2nd respondent/Insurance Company from the liability and no interference is called for in the award of the Tribunal and prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the Tribunal was right in directing the 1st respondent to pay the compensation instead of directing the 2nd respondent to pay and recover the



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compensation from the 1st respondent.

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11.On perusal of the records, it is seen that, admittedly, the 1st respondent had violated the terms of the Insurance policy and that it is therefore breach of the policy conditions. In such circumstances, the Tribunal ought to have directed the 2nd respondent to pay the compensation and recover the same from the 1st respondent. Therefore, the finding of the Tribunal directing the 1st respondent to pay the entire compensation is set aside. The 2nd respondent is directed to pay the compensation determined by the Tribunal at Rs.2,84,870/- with liberty to recover the same from the 1st respondent.

12.With the above modification, this Civil Miscellaneous Appeal is allowed and the 2nd respondent/Insurance Company is directed to pay the entire compensation amount of Rs.2,84,870/- to the appellant, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within a period of six (6) weeks from the date of receipt of a copy of this judgment with liberty to recover the same from the 1st respondent-owner of the motorcycle. On such deposit, the appellant is permitted to withdraw the entire award amount, along with



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interest and costs, less the amount already withdrawn, if any. The appellant is not entitled to the interest for the delay period of 1059 days as per the order of this Court dated 05.06.2023 in C.M.P.No.8312 of 2023. No costs.

12.09.2023

rst

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

To:

- 1.The Motor Vehicle Accident Tribunal,
III Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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