IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2201 of 2018
and
C.M.P.No.17086 of 2018

The Divisional Manager,
Oriental Insurance Company Ltd.,
3rd Party Claim Hub, Sathuvachari,
Vellore – 9. ...Appellant / 2nd respondent

Vs.

1. Pathypoornam ... Respondent/Petitioner
2. Madhivanan … Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.02.2018 made in M.C.O.P.No.173 of 2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ranipet.

For Appellant	:	Mr. D. Bhaskaran
For R1	:	Mr. E. Kannadasan
For R2	:	Dispensed with

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed in M.C.O.P.No.173 of 2015, dated 14.02.2018, aggrieved over the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Court, Ranipet, Vellore District.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The case of the petitioner in brief is that on 12.03.2015 at about 3.00 p.m., the petitioner was walking along the road on Periyar Nagar, near Government Wine Shop, at that time a two-wheeler bearing registration No.TN 02 AT 3749 ridden by its rider in a rash and negligent manner and hit against the petitioner causing fracture on the left leg and multiple injuries all over the body. She was admitted in the Arcot Government Hospital and then admitted to the Vellore Government Hospital for further treatment. A

case was registered in Crime No.68/2015 under Sections 279 and 337 IPC against the rider of the two-wheeler. Hence, the petitioner filed a petition claiming compensation for a sum of Rs.4,00,000/-.

4. It is submitted by the learned counsel for the appellant/Insurance Company that before the Tribunal the Insurance Company is able to establish that the driver of the offending vehicle was not holding valid driving licence at the time of accident but without considering the case put forth by the Insurance Company, the Tribunal has passed an award directing the Insurance Company to pay the compensation.

5. Admittedly, the injured was walking in a road and was hit by the two-wheeler ridden by the rider of the first respondent and by examining the Official of the Insurance Company has marked Ex.R2-Copy of the letter, the first respondent seeking details of the driving licence of the rider of the offending vehicle but no reply has been received by the Insurance Company.

6. Before the Tribunal, the Insurance Company has also examined as R.W.2 – The Assistant of the Regional Transport Office,

Ranipet and she has deposed that one Ramkumar,who was driven the offending vehicle, at the time of occurrence, who was residing within the jurisdiction of the Regional Transport Office, Ranipet has not obtained licence from their office and the letter of the Regional Transport Officer, Ranipet, informing that no licence has been issued in the name of Ramkumar, marked as Ex.R5. By marking Exs.R2 to R5 and also by examining the official from the Regional Transport Office, the Insurance Company has proved their case, that at the time of accident, the driver of the offending vehicle namely, Ramkumar was not holding any valid driving licence of the two-wheeler.

7. Being a third party, the claimant is entitled to get compensation from the insurer as well as the insured. However, in the case of violation of the policy condition as well as the violation of the statutory conditions as per the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaransingh and others*** reported in ***A.C.J. 2004 (Volume - I)***, it is held that being a third party and it is statutory obligation on the part of the Insurance Company to satisfy the claim of the third party and to recover the same from the owner of the vehicle.

8. Similarly, Judgment of the Hon'ble Apex Court in ***Oriental Insurance Co. Ltd., vs. Nanjappan and others*** reported in ***(2004) 13 Supreme Court Cases 224,*** it is also held that the Insurance Company can file Execution Petition to enforce the award as if the same is decree of Civil Court. In view of the same, it is open to the Insurance Company to recover the amounts from the second respondent by filing Execution Petition.

9. Accordingly the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.95,000/-, under various heads along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit is confirmed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.173 of 2015, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ranipet, Vellore District and recover the same from the second respondent. In other aspects, the award of the Tribunal shall

stand confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

22.06.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Ranipet, Vellore District.

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

K.RAJASEKAR,J.

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C.M.A.No.2201 of 2018

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