



C.M.A.No.2990 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2990 of 2021

Kalpana

... Appellant/petitioner

Vs.

1. M. Padmanaban

2. The United India Insurance Company Ltd.,
Motor TP Claims Office,
No.73 C, MTH Road, 1st Floor,
Chennai – 600 053.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 16.03.2021, made in M.C.O.P.No.31 of 2019, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Tiruvallur.

For Appellant : Mr. K. Naveen Kumar

For R1 : No appearance

For R2 : Mr. R. Rajesh



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the Award passed in M.C.O.P.No.31 of 2019, dated 16.03.2021, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Tiruvallur.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The petitioner has sustained fracture while he was travelling as a pillion rider in the motorcycle bearing Registration No.TN 03 P 9954 on 23.07.2015 at about 02.30 p.m., near Mint Parthasarathy Bridge Down, after hit by a motorcycle bearing Registration No.TN 04 S 3085 which came behind in rash and negligent manner. A case was registered against the driver of the motorcycle bearing Registration No.TN 04 S 3085 in Crime No.162/2015 under Section 337 IPC on the file of the Washermenpet Police Station. After taking treatment, she has come forward with the claim petition claiming compensation of Rs.5,00,000/- for the injuries sustained by her in the road accident.



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4. The first respondent being the owner of the motorcycle has not contested the claim and was remained ex-parte. The second respondent disputed the claim and contended that the rider of the petitioner's motorcycle came in uncontrollable high speed, caused accident hence the respondent need not to pay any compensation. Disputed the petitioner age, avocation and income and disability sustained by the claimant. In any event, the compensation claimed by the petitioner is on the higher side. Hence prays to dismiss the claim.

5. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.2,15,622/- rounded off at Rs.2,12,400/- as compensation to the petitioner and absolved the Insurance Company on the ground that the Rider of the 1st respondent vehicle was not having valid driving licence and it's a statutory of policy violation.

6. Aggrieved over the Order of absolving the Insurance Company from paying compensation and also seeking enhancement of compensation, this appeal is filed.



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7. I have heard and considered the rival submissions made on both sides and also perused the materials placed on record.

8. The Tribunal after considering the evidences placed on record has held that the rider of the offending vehicle was not having valid driving licence and by relying on the Judgment of the Hon'ble Apex Court in ***Beli Ram vs. Rajinder Kumar and another [2020 (2) TNMAC 445 (SC) : 2020 SCC Online SC 769]*** as held that the Insurance Company is not liable to indemnify the insured and absolving the Insurance Company from paying compensation and directed the first respondent, who is the owner of the vehicle to pay compensation.

9. This Court is of the view than the view taken by the Tribunal relying on the Judgment of ***Beli Ram*** case cited supra is not applicable to the case of the petitioner herein. The Apex Court considered the compensation claimed under workmen compensation act, the claimant himself was not having valid driving licence at the time of suffering employment injury. In this case the injured is a third party, and as far as third party risks are



concerned, the Judgment of the Apex Court in *National Insurance Co., Ltd., vs. Swaran Singh & Ors* [2004 (3) SCC 297 : AIR 2004 SC 1531] still holds the field and the same is reiterated by the learned counsel in the recent Judgment in *K.Periyasamy vs. M.Madeswaran and Others* [2023 (2) TNMAC 410 : MANU/TN/5609/2023]. It is held by this Court as follows:

*“ If there is a violation of policy condition with regard to non-possession of the valid driving licence, pay and recovery to be ordered. Considering the fact that the injured is a third party, applying the principle laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd., vs. Swaransingh and Others** reported in MANU/SC/0021/2004 : 2004 (3) SCC 297, the Tribunal ought to have followed the principle of 'Pay and Recover'.”*

10. Since in this case, the injured herein is a third party the Insurance Company is directed to pay compensation and thereafter, to recover the same from the first respondent, the owner of the vehicle herein.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby confirmed.



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The second respondent-Insurance Company is directed to deposit the award amount and to recover the same from the first respondent. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

15.12.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Special Sub Judge No.II,
Motor Accidents Claims Tribunal,
Tiruvallur.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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