THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.639 of 2017

K.Janakiraman ... Appellant/Petitioner

Vs.

1.E.Arul

2.The Oriental Insurance Company Ltd.,
Ranipet. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 17.12.2013 made in M.C.O.P.No.67 of 2012 on the file of the Motor Accident Claims Tribunal, (In the Court of II Additional District and Sessions Judge) Vellore at Ranipet, in so far as dismissing the claim against the 2nd respondent and directing the 1st respondent to pay compensation.

For Appellant : Mr.T.P.Prabakaran

For Respondents : Died [R1]
Mr.S.Arun Kumar [R2]

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JUDGEMENT

The claimant is before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, (In the Court of the II Additional District and Sessions Judge) Vellore at Ranipet in M.C.O.P.No.67 of 2012, dated 17.12.2013.

2. On 22.07.2010 at about 7.00 p.m., when the petitioner was riding a motorcycle bearing Reg.No.TN-73-A-4268 at Arcot to Cheyyar Road at Kadappanthangal Junction, another Hero Honda motorcycle bearing Reg.No.TN-23-AP-5527, which was owned by the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner dashed the petitioner's vehicle, as a result of which, the petitioner sustained multiple grievous injuries on his head. Thereafter, petitioner had filed a petition claiming a total compensation of a sum of Rs.5,00,000/- under various heads.

3. When the case was taken up for hearing, the learned counsel for the appellant submitted that a memo dated 30.08.2023 has been filed by the appellant stating that since the first respondent remained ex-parte in the

claim petition, he may be given up for adjudicating the above appeal and the first respondent died and the whereabouts of the legal heirs of the first respondent could be traced. The death of the first respondent is therefore recorded.

4. Before the Tribunal, the petitioner had examined himself as P.W.1 and examined the doctor as P.W.2 and marked seven documents viz., Ex.P.1 to Ex.P.7. On the side of the respondents, the respondents examined two witnesses, viz., Ex.R.1 and Ex.R.2 and marked five documents viz., Ex.R.1 to Ex.R.5. After adjudication, the Tribunal awarded a sum of Rs.1,14,200/- with an interest of 7.5% p.a. directing the owner of the vehicle to pay the amount. Aggrieved by the order not directing pay and recovery, the petitioner/claimant had filed the present appeal for enhancement.

5. The learned counsel appearing for the appellant submitted that the Tribunal had directed the first respondent/owner of the offending vehicle to pay the compensation to the appellant, however, the Tribunal had not fastened liability as against the second respondent/insurance company on the ground that the driver of the offending vehicle does not possess any valid driving licence and refused to order for pay and recovery, inspite of the

benevolent nature of the Motor Vehicles Act. On the sole ground, the present appeal has been filed by the appellant.

6. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, the appellant and the driver of the offending vehicle does not possess valid driving licence, at the time of accident. As per the policy, the person who possess valid driving licence is entitled to drive the vehicle, then only, the second respondent/insurance company is liable to pay compensation. The Apex Court in a case reported in ***2011 (1) TNMAC 288*** held that when there is no licence to drive a vehicle, pay and recovery cannot be applied. Applying the said decision, the Tribunal refused to fasten the liability as against the second respondent/insurance company. Further, the first respondent/owner of the vehicle passed away, however, the appellant has not impleaded his legal heirs. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the order not directing the insurer to pay the compensation and, thereafter, recover the same from the owner of the vehicle.

9. Contract of insurance is entered into between the insurer and insured on a set of commitments. One of the said commitments is that the driver of the vehicle should be in possession of a valid driving licence. In the absence of a valid driving licence, no liability can be fastened on the insurer to pay the compensation, even though the legislation is a benevolent legislation.

10. In the case on hand, it is not the case of the appellant that the driver of the offending vehicle was in possession of a valid driving licence. The finding of the Tribunal with regard to the driver of the offending vehicle not being in possession of a valid driving licence is not put in issue. The only grievance is that the Motor Vehicles Act, being a benevolent legislation,

the insurer should be directed to pay the compensation and recover the same from the owner of the vehicle. However, the Courts in a catena of decisions have deprecated the act of the persons, who drive the vehicle without a valid driving licence and where accident occurs, place the burden on the insurer to pay the compensation. Though the Courts order for recovery of the same from the owner of the vehicle, the procedure is cumbersome and at times, the compensation paid is written off, leading to fastening higher burden on the legitimate policy holders to pay higher premium.

11. Be that as it may. The driver of the offending vehicle was not possessed of a valid driving licence. The terms of the policy, which has been entered into between the insured and the insurer indemnifies the insured only if the terms and conditions are complied with of which one of the terms relates to the driver possessing a valid driving licence. In the case on hand, the driver of the vehicle being not possessed of a valid driving licence, rightly, the Tribunal has rejected the claim for pay and recovery and had ordered the first respondent, viz., the owner of the vehicle to pay the compensation, which cannot be said to be erroneous and the same deserves no interference at the hands of this Court.

12. For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 17.12.2013 made in M.C.O.P.No.67 of 2012 on the file of the Motor Accident Claims Tribunal, (In the Court of the II Additional District and Sessions Judge), Vellore at Ranipet is confirmed. However, in view of the fact that the first respondent is stated to have died, it is open to the appellant/claimant to take appropriate action to recover the award amount from the legal heirs of the first respondent. No costs.

16.11.2023

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

1.The Motor Accident Claims Tribunal,
(In the Court of the II Additional District and Sessions Judge),
Vellore at Ranipet.

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

M.DHANDAPANI, J.,

sp

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