



C.M.A.No.4855 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 29.11.2023**

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**C.M.A.No.4855 of 2019**

**and**

**C.M.P.No.27960 of 2019**

New India Assurance Company Limited,  
Motor Third Party Claims,  
No.67, Moore Street, Chennai – 600 001. ... Appellant

Vs.

1.Devendiran

2.M.Prathap ... Respondents

**Prayer** : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P.No.2625 of 2014 dated 06.08.2019 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Ms.S.R.Sumathy

For Respondents : Mr.M.P.Jayaprakash[R1]

Ms.P.Pooja

for M/s.K.Varadha Kamaraj [R2]

\*\*\*\*\*



C.M.A.No.4855 of 2019

WEB COPY

### **JUDGEMENT**

Questioning the liability fixed against the insurance company, even in the absence of driving licence by the driver of the offending vehicle, the present appeal is filed.

2. On 22.03.2014 at about 1.30 hours, when the claimant was standing on the extreme left side of the road on Chennai to Bangalore Highway at Thammal Erikarai due to the puncture of the bus bearing Regn.No.TN-23-N-2291, a lorry bearing Regn.No.TN-23-W-5607, 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 claimant, as a result of which, the claimant sustained multiple grievous injuries. Thereafter, the claimant had filed a claim petition claiming a total compensation of a sum of Rs.6,00,000/- for the injuries sustained by him in the accident.

3. Before the Tribunal, the claimant had examined himself as



C.M.A.No.4855 of 2019

WEB COPY

P.W.1 and marked 11 documents viz., Ex.P.1 to Ex.P.11. On the side of the respondents, they have examined one witness, viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2. The Tribunal has marked the disability certificate issued by the Regional Medical Board as Ex.C.1. After adjudication, the Tribunal awarded a sum of Rs.3,39,000/- as compensation, directing the insurance company to pay the said compensation to the claimant. Aggrieved by the same, the insurance company had filed the present appeal.

4. The learned counsel appearing for the appellant submitted that, though initially the appellant had filed a counter before the Tribunal and subsequently, filed additional counter before the Tribunal, in which a specific plea has been taken that the driver of the lorry does not possess valid driving licence and fitness certificate was not renewed. In order prove the same, the appellant had examined the Assistant, RTO, Vaniyambadi as R.W.1, who deposed that the driver of the lorry does not possess driving licence on the date of accident. However, the Tribunal has held that the appellant has not sent legal notice to the first respondent and his driver for the production of the driving licence. She further



C.M.A.No.4855 of 2019

WEB COPY

submitted that, though the first respondent had appeared through his counsel, he has not filed any counter and not examined any evidence in order to ascertain whether the driver of the lorry possessed valid driving licence. Instead of fastening the liability against the first respondent, the Tribunal has fastened the liability against the appellant and not ordered for pay and recovery, which is wholly erroneous. On the sole ground, the present appeal has been filed by the appellant.

5. Per contra, the learned counsel appearing for the first respondent did not dispute the fact that the counsel appeared before the Tribunal, however, no counter has been filed on the first respondent. He also submitted that, if the appellant/insurance company filed a claim petition as against the first respondent, at that time, liberty may be granted to the first respondent/owner of the lorry to produce driving licence possessed by the driver of the lorry, if situation arises. Accordingly, he prays for dismissal of the appeal.

6. The learned counsel appearing on behalf of the second respondent/claimant submitted that, the Tribunal has properly



C.M.A.No.4855 of 2019

appreciated all the evidence and has rightly fastened the liability on the appellant/insurance company to pay the compensation to the claimant, which does not require any interference of this Court. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant, the learned counsel appearing on behalf of the first respondent and the learned counsel appearing on behalf of the second respondent and also 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 appellant/insurer is with regard to the order not directing the insurer to pay the compensation and, thereafter, recover the same from the first respondent/owner of the vehicle.

9. A perusal of the award reveals that, P.W.1 deposed that the accident was occurred due to the rash and negligent act of the driver of the lorry and since no contra evidence has been adduced, the Tribunal



C.M.A.No.4855 of 2019

WEB COPY

has arrived at the conclusion that due to the rash and negligent driving of the driver of the lorry, the accident had happened. Further, in order to prove that the driver of the lorry does not possess valid driving licence, the insurance company has examined R.W.1, who had deposed that the driver of the lorry does not possess valid driving licence. Based on the evidence of R.W.1, the Tribunal ought to have directed the appellant/insurance company to compensate the claimant and recover the same from the first respondent/owner of the lorry. However, the Tribunal had directed the insurance company to pay the compensation as if the insurance company was liable to indemnify the owner, which finding is perverse and the same is liable to be set aside.

10. In view of the well acceptable ratio on this issue, this Court directs the insurance company to pay the compensation awarded by the Tribunal and thereafter, recover the same from the owner of the vehicle. However, if the driver of the lorry was in possession of valid driving licence, which has not been appreciated by the Tribunal and which licence is available with the driver of the lorry, it is open to the first respondent/owner of the vehicle to workout his remedy with regard to



C.M.A.No.4855 of 2019

recovery of the amount as ordered by this Court in accordance with law.

WEB COPY

11. For the reasons aforesaid, the Civil Miscellaneous Appeal is allowed and the impugned award of the Tribunal is modified, directing the appellant/insurance company to deposit the compensation quantified by the Tribunal to the credit of M.C.O.P.No.2625 of 2014, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the second respondent/claimant through RTGS within a period of two (2) weeks thereafter. Thereafter, the appellant/insurance company is at liberty to recover the said amount from the first respondent/owner of the lorry in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

**29.11.2023**

Index : Yes / No

Speaking order / Non-speaking order



C.M.A.No.4855 of 2019

Neutral Citation Case : Yes / No  
sp

**M.DHANDAPANI, J.,**

sp

To

- 1.The Motor Accident Claims Tribunal, V Small Causes Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.

**C.M.A.No.4855 of 2019**

**29.11.2023**