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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.768 of 2022

S.Devaraj .. Appellant

Vs.

1. K.Gunasekar

2. The Manager
IFFCO TOKIO General Insurance Co. Ltd.,
No.28/195, North Usman Road,
T.Nagar, Chennai – 17. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decreetal order dated 29.04.2019 made in MCOP No.325 of 2012 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge (FAC), Kanchipuram.

For Appellant : Mr.S.Sankaralingam

For Respondents : Mr.V.Manohar for R1
Mr.M.Jayaraj for R2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant challenging the finding of the Tribunal exonerating the 1st respondent from its liability holding that as the rider of the offending motor cycle did not possess a valid driving licence at the time of accident, the first respondent is not liable to pay compensation.

2.The appellant filed M.C.O.P. No.325 of 2012 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge (FAC), Kanchipuram claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.01.2012.

3. According to the appellant, on the date of accident, i.e. 29.01.2012 while he was travelling as a pillion rider in the motorcycle bearing Regn.No.TN 09 0721 from Nemeli to Siruvalayam Village, near Ganapathypuram to Senthamangalam road, the rider of the motor cycle bearing Regn. No.TN 73X 4480, without following the traffic rules, rode the

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same in a rash and negligent manner and dashed against the motorcycle in which the appellant was riding as pillion rider and caused the accident. In the above said accident, the appellant sustained grievous injuries and hence filed claim petition claiming compensation against the respondents.

4. The second respondent filed counter statement stating that the accident has occurred due to collusion between two vehicles but the first respondent had not impleaded the other vehicle and hence the petition is bad for non-joinder of necessary parties. At the time of accident, the first respondent was not possessing valid driving licence. Hence, the second respondent is not liable to pay any compensation to the appellant and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined himself as PW1and marked six documents as Exs.P.1 to Exs.P.6. On the side of the respondent, one Thanikachalam was examined as RW1 and three documents were marked as Exs.R1 to R3.

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6. The Tribunal after considering the evidence and documents filed on the side of the appellant as well as the respondents, awarded a sum of Rs.5,07,200/- as compensation to the appellant and directed the 1st respondent to pay the compensation. The Tribunal dismissed the claim petition as against the second respondent.

7. Challenging the said order of the Tribunal dismissing the claim petition as against the second respondent from its liability, the appellant has preferred the present appeal .

8. The learned counsel appearing for the appellant submitted that the Tribunal, having held that the vehicle of the 1st respondent was insured with the second respondent, ought not to have directed the first respondent to pay the compensation to the appellant. The Tribunal ought to have directed the second respondent/insurance company to pay the compensation amount at the first instance and recover the same from the first respondent. In support of

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his contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh reported in 2004 (1) ACJ 1 SCC.*** The learned counsel further contended that the compensation awarded by the Tribunal towards pain and suffering, transportation, medical expenses are meagre and prayed for allowing the appeal.

9. Per contra, the learned counsel appearing for the first respondent submitted that at the time of accident, the first respondent was holding a valid driving licence to drive the vehicle. The Tribunal had not taken into consideration the evidence let in by the first respondent to show that he had a valid driving licence and hence no liability can be fixed on the first respondent.

10. The learned counsel appearing for the second respondent/insurance company contended that the award of the Tribunal is just and reasonable and and need not be interfered with. In any event, since the liability was fixed on

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the first respondent, the second respondent/insurance company had no opportunity to challenge the quantum of compensation awarded by the Tribunal. The Tribunal had computed the compensation by adopting multiplier method which is erroneous in the facts and circumstance of the case and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant, first respondent as well as second respondent and perused the materials available on record.

12. The short question involved in the present appeal is whether the Tribunal ought to have directed the second respondent/insurance company to pay the compensation amount at the first instance and recover the same from the first respondent.

13. Admittedly, the first and second respondent have not challenged the award passed by the Tribunal. The first respondent though claims that he was

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possessing valid driving licence at the time of accident, he has not established the said fact before the Tribunal, as can be seen from the findings of the Tribunal. In any event, the first respondent has not challenged the said finding. Hence, the finding of the Tribunal that the first respondent is liable to pay the compensation cannot be faulted. However, the issue involved in this appeal is whether the Tribunal ought to have directed the second respondent/insurance company to pay the compensation amount at the first instance and recover the same from the first respondent. Admittedly, the offending vehicle of the first respondent was insured with the second respondent/insurance company.

14. It is well setted that if the rider of the two wheeler or driver of the four wheeler did not posses driving licence, the Insurance Company must satisfy the award at the first instance and recover the same from the owner of the vehicle. In the judgement reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of

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accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the third party claim for the reason that the driver had no licence or badge and after paying the amount to claimant, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

15. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company, on the ground that the rider of the two wheeler belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation amount of Rs.5,07,200/- to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle. In all other aspects, the

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award of the Tribunal is confirmed.

16. With the above observation, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,07,200/- is confirmed together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period of 117 days in filing the present appeal. The second respondent / Insurance Company is directed to deposit the award amount, determined by Tribunal along with interest and costs, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount alongwith interest and costs. No costs.

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

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SUNDER MOHAN, J

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To

1.The Principal Subordinate Judge (FAC),
Motor Accident Claims Tribunal,
Kanchipuram.

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

C.M.A.No.768 of 2022

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