IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1423 of 2019

T.Annadurai ... Appellant / Petitioner

Vs.

1. K.Palanisamy

2. The Branch Manager,
National Insurance Company Limited,
LRN Building, 2nd Floor,
Saradha College Road,
Salem District - 636 007. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2014 made in M.C.O.P.No.84 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant	:	Mr.R.Nalliyappan
For Respondents	:	Ms.R.Sree Vidhya for R2 Not ready notice for R1

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.84 of 2013 filed by the claimant, the appellant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. On 11.05.2012, at about 9.00 pm., when the claimant was riding motorcycle bearing Registration No.TN-29-AZ-7804 near Karur to Salem main road at Samiyapuram Junction, at that time, the rider of the Hero Honda Splendor Plus bearing Registration No.TN-29-AX-5887 driven in a rash and negligent manner came with a high speed and dashed against the claimant in which the claimant suffered injuries for which he was admitted in the Hospital. Due to the loss suffered on account of the accident, the claimant, claiming compensation for the injuries sustained and also for loss of income, had filed the claim petition. The said claim was resisted by the second respondent / Insurance Company. The first respondent is the owner of the offending vehicle and the second respondent is the Insurance Company.

3. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P11 were marked. The Insurance Company did not let in any evidence either orally or documentary. The Tribunal, after considering the evidence placed on record, had held that the accident occurred due to rash and negligent driving of the rider of the motorcycle belonging to the first respondent and directed the first respondent to pay a sum of Rs.3,96,391/- as compensation to the appellant.

4. Since the first respondent remained *ex-parte* before the Tribunal, the claimant is before this Court by filing the present civil miscellaneous appeal to enhance the compensation awarded by the Tribunal by fixing the liability against the second respondent / Insurance Company.

5. The learned counsel appearing for the appellant / claimant submitted that the Tribunal erred in fixing liability on the first respondent by holding that the appellant herein had not proved that at the time of the accident, the first respondent's vehicle was insured with the second

respondent / Insurance Company, since the appellant in the petition claiming compensation specifically mentioned the insurance policy number which was insured under the second respondent / Insurance Company. The learned counsel admitted that the appellant has not marked the copy of the insurance policy of the first respondent's vehicle before the Tribunal, however the same has been produced before this Court and hence the learned counsel for the appellant seeks indulgence of this Court to interfere with the award and fix the liability on the second respondent / Insurance Company so that the compensation amount is paid to the appellant.

6. The learned counsel further submitted that P.W.2-Doctor, who assessed the disability of the appellant at 70% as permanent disability, the Tribunal without any reason reduced the disability to 25% and also awarded a meager sum of Rs.1,80,000/- under the head disability. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company admitted the fact that there was a policy existing at the time of the accident for the first respondent's vehicle bearing Registration No.TN-29-AX-5887, however, the claimant has to establish that whether the rider of the offending vehicle had the valid driving license before the Tribunal. If the claimant fails to establish that the rider of the offending vehicle did not possess valid driving license at the time of the accident, then 'pay and recovery' can be ordered and also the compensation awarded under other heads, which does not require any interference.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The factum of the accident is not disputed by the parties. The only grievance of the appellant is with regard to liability. It is seen from the

records that at the time of accident, the first respondent's vehicle has the valid insurance policy, i.e., from 18.05.2011 to 17.05.2012 and the appellant has been successful in producing a copy of the insurance policy before this Court. The same is perused by this Court and is taken on record. Hence, the second respondent / Insurance Company is liable to pay the compensation.

10. However, insofar as the driving licence of the rider is concerned, it is not necessary for the the appellant to establish whether the rider of the offending vehicle possessed valid driving licence at the time of the accident. Since there is a proof available to prove that the first respondent's vehicle was insured with the second respondent / Insurance Company at the time of the accident, it is the duty of the insurer to pay the compensation to the claimant and if the rider of the first respondent's vehicle was not possessed of a valid driving licence, the insurer can very well recover the same from the owner of the vehicle. Therefore, the second respondent / Insurance Company is liable to pay compensation to the appellant as the liability to pay the compensation is on the second

respondent / Insurance Company. Since this is a disputed fact and needs to be proven by documentary evidence, the same has to be gone into by the Tribunal at the time when the petition for recovery of the amount is filed by the Insurance Company. Further, the amounts awarded by the Tribunal under the various heads which in the opinion of this Court, is justified.

11. Therefore, considering the peculiar circumstances of the case, the second respondent / Insurance Company is directed to deposit the entire award passed by the Tribunal along with interest and costs within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.84 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. Accordingly, this appeal is disposed of with the following directions:

(i) The award dated 27.08.2014 made in M.C.O.P.No.84 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal is confirmed.

(ii) The second respondent / Insurance Company is directed to pay the compensation to the appellant / claimant and recover the same in accordance with law from the owner of the vehicle.

(iii) At the time of consideration of the petition for recovery, the owner of the vehicle is at liberty to produce documentary evidence establishing that the rider of the vehicle was possessed of valid driving licence at the time of the accident and if the driving licence is produced by the owner of the vehicle, upon ascertaining the genuineness of the licence, the Tribunal may pass appropriate orders on the recovery petition which is the subject matter of compensation in M.C.O.P.No.84 of 2013 accordingly.

(iv) There shall be no order as to costs in this appeal.

09.11.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

1. The Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate,
   Namakkal.

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

M.DHANDAPANI, J.

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