



WEB COPY



C.M.A.No.322 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.322 of 2019

P.Seerangan

... Appellant

-VS-

1.Madheswaran

2.K.Thangavel

3.Bajaj Alliance General
Insurance Co.Ltd.,
Govt.Arts College Road,
Coimbatore Town and District.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award of the Learned Motor Accidents Claims Tribunal (Fast Track Court No.4), Bhavani, Erode District made in M.C.O.P.No.157 of 2007 dated 24.01.2008.

For Appellant : Mr.R.P.Ruban Chakravarthy
For Mr.S.Kaithamalai Kumaran

For Respondent
(For R3) : Mr.N.Vijayaraghavan

(For R1) : Notice Served

(For R2) : Notice Unserved



C.M.A.No.322 of 2019

J U D G M E N T

WEB COPY

This appellant, who is the owner of the vehicle, has come forward with this appeal, seeking to quash the judgment and award of the Learned Motor Accidents Claims Tribunal (Fast Track Court No.4), Bhavani, Erode District made in M.C.O.P.No.157 of 2007 dated 24.01.2008.

2. The case of the claimant is that on 23.11.2005 at about 11.00 AM while the first respondent was riding TVS 50 bearing Reg. No.TN 38 6664 along with one Nagaraj, who was sitting as a pillion rider in order to go to Thavittupalayam, at that time, a van bearing Reg. No.TN 36 11 4954 driver its driver, owned by the appellant, in a rash and negligent manner, hit the claimant and another, due to which, he sustained injuries. Thereby, the claimant has filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.2,50,000/-

3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimant, two witnesses were examined viz., PW1 to PW2 and marked 13 documents viz., Exs.P1 to P13, On the side of the respondent/Insurance company, one witness was examined and one document was marked. The

Tribunal, considering the pleadings, oral and documentary evidence, awarded a



C.M.A.No.322 of 2019

sum of Rs.66,630/- and pay and recover method has been ordered. Aggrieved by the same, the appellant, who is the owner of the van, has filed this appeal before this Court.

4. The learned counsel for the appellant submitted that admittedly, the claimant has no valid driving license at the time of the accident. Hence, he was the tortfeasor, not entitled to any compensation. The accident had occurred only due to the negligent driving of the claimant, not on the part of the van driver. Hence, the appellant is not liable to compensate the appellant.

5. The learned counsel appearing for the insurance company submitted that mere holding of a valid driving license would not be sufficient to hold that there is no negligence on the part of the driver of van. The Tribunal has rightly passed award, which cannot be interfered with.

6. 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.

7. Though the Tribunal awarded compensation to the claimant payable by the insurance company and ordered pay and recovery method. The Insurance



C.M.A.No.322 of 2019

company was directed to recover the amount from the driver and owner of the van later. It is the main grievance of the appellant that there is no negligence on the part of the driver of the van and further, the appellant has no valid driving license at the time of the accident. Therefore, he is not liable to compensate the claimant.

8. A careful perusal of the documents available on record as also the order passed by the Tribunal, the fact remains that the driver of the van has valid driving license at the time of the accident and there is no dispute with regard to insurance policy, which was in force at the time of the accident. In such situation, the the insurance company is liable to pay compensation to the claimant. It has been categorically laid down by the Supreme Court in the case of *Mukundh Devangan*, this Court sets aside the award in respect of the method "pay and recover" and directs the the Insurance company to deposit compensation awarded by the Tribunal in the credit of case number with 7.5% interest per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant through RTGS within a period of two weeks thereafter.



C.M.A.No.322 of 2019

9. With the above direction and observation, the civil miscellaneous appeal is allowed. 3No costs.

02.11.2023

Rli

Index: Yes/No

NCS : Yes/No

To

The Motor Accidents Claims Tribunal
(Fast Track Court No.4),
Bhavani, Erode District.



WEB COPY



C.M.A.No.322 of 2019

M.DHANDAPANI, J.

Rli

C.M.A.No.322 of 2019

02.11.2023