IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4438 of 2019

Vangalayee ... Appellant

Vs.

1.Mappilai Moideen

2.The Bharathi AXA General
Insurance Co. Ltd.,
Rep. by Branch Manager,
Divya Trade Centre, 1st Floor,
No.11, Brindavan Road, Fair Land,
Salem – 636 016. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, against the judgment and decree dated 15.07.2013 made in MACT O.P.No.7 of 2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal.

For Appellant	:	Mr.M.Selvam for Mr.V.Ravichandran
For Respondents		
For R1	:	No appearance
For R2	:	Mrs.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal arises against the award passed by Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal, in M.C.O.P.No.7 of 2012 dated 15.07.2013.

2. The claim petitioner is the appellant herein, filed the above appeal, challenging the award passed in MCOP.No.7 of 2012, on the file of Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal, on the ground of quantum as well as liability.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. It is the case of the claim petitioner that on 17.03.2011 at about 3.30 p.m, when the claim petitioner was travelling in her TVS 50 on her extreme side of the Mohanur to Kattuputhur main road, near Sulakannimotakku, the 1st respondent's vehicle bearing Regn.No.47-Y-6403

(Mini Auto) was driven by its owner / 1st respondent, in a rash and negligent manner, dashed against the petitioner. Hence the accident occurred, due to which, the petitioner sustained grievous injuries on her right wrist, right hand and all over the body. Hence the claim petition.

5. Before the Tribunal, on behalf of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked and on the side of the Respondents, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R5 were marked.

6. After going through the oral and documentary evidence, the Tribunal has come to the conclusion that the alleged accident occurred due to the negligent driving of the 1st respondent and fixed the entire liability on him since he had not possessed badge to drive the vehicle and awarded compensation as follows:-

(a)Loss of income	:	Rs.	9,000/-
(b)Disability	:	Rs.	30,000/-
(c)Pain and Suffering	:	Rs.	20,000/-
(d)Medical expenses	:	Rs.	18,507/-

(e)Transportation	:	Rs. 5,000/-
(f)Extra nourishment	:	Rs. 10,000/-
(g)Attender charges	:	Rs. 5,000/-
		Rs. 97,507/-

The said sum was directed to be paid by the 1st respondent along with interest at 7.5% per annum from the date of petition till the date of realization.

7. The learned counsel for the appellant submitted that the Tribunal erred in awarding Rs.97,507/- as compensation in respect of the injuries sustained by the petitioner in the accident. The Tribunal failed to consider and appreciate the evidence of P.W.1 and P.W.2 properly. The Tribunal erred in coming to a conclusion that the loss of earning capacity of the appellant as without considering the nature of injuries sustained and the resultant disability. The injured is a third party and the Insurance Company is liable to pay the compensation. The Tribunal erred in holding that the Insurance Company is not liable for compensation due to the violation of policy conditions by the driver with license without badge. The Tribunal ought to have directed the Insurance Company to satisfy the award and

recover the same from the owner of the vehicle namely mini auto. The Tribunal awarded a very meagre amount under various heads and ought to have awarded reasonable amount.

8. The learned counsel for the 2nd respondent on the other hand, submitted that the compensation awarded by the Tribunal is highly excessive and it has to be modified. He further submitted that at the time of accident the driver of the offending vehicle has not possessed valid badge and hence, he has violated the policy conditions with license without badge. Therefore, the liability fixed on the 1st respondent is correct and it does not require any interference by this Court.

9. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the entire materials available on record.

10. A perusal of the award reveals that Ex.P1 - copy of the First Information Report was registered against the auto bearing Regn.No.TN-47-

Y-6403 stating that the driver of the auto was responsible for the accident, which corroborated with the version of claimant. But, at the time of accident, the driver of the auto did not possess valid and effective badge to drive the auto. However, there was Insurance policy coverage for the said auto as seen from the Insurance Policy and driving license which were marked as Ex.R2 and Ex.R3 respectively before the Tribunal.

11. It is now settled law that whenever the driver of the insured vehicle was not possessing a valid license or badge at the time of the accident, the Insurance Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). However, as seen from the impugned award, without considering the aforesaid settled law, the Tribunal has fixed the entire liability only on the part of the 1st respondent, who is the owner of the vehicle and failed to award pay and recovery rights to the 2nd respondent/Insurance Company. Therefore, this Court is of the opinion that it would be appropriate to fix the liability on the 2nd respondent/Insurance Company, who is being the insurer of the 1st respondent vehicle, to pay the compensation to the claimant and

thereafter, recover the same from the owner of the vehicle. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of pay and recovery, except the modification with regard to the quantum of compensation awarded by the Tribunal.

12. In fine,

(i) the Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The entire liability fixed on the 1st respondent by the Tribunal under the impugned award is hereby set aside.

(iii) The 2nd respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.No.7 of 2012, within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law.

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter. No costs.

20.06.2023

Index:yes/no
ata

To
The Presiding Officer,
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Namakkal.

A.A.NAKKIRAN.J.,

ata

C.M.A.No.4438 of 2019

20.06.2023