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C.M.A. No.2321 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A. No.2321 of 2018
and CMP.No.17745 of 2018

The Branch Manager,
National Insurance Company Ltd.,
No.81T, 2nd Floor, Vadakuratha Vithi,
Thirichangode (Tk), Namakkal (Dt)

...Appellant

Versus

1. Palanisamy
2. Muthusamy

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.900 of 2016 on 06.06.2017 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), at Namakkal, District.

For appellant : Mr.J.Chandran

For respondents

for R1 : No Appearance

for R2 : Mr.C.Paraneedharan



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J U D G M E N T

The present appeal has been filed by the Insurance Company challenging the judgment and decree passed in MCOP.No.900 of 2016 on 06.06.2017 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), at Namakkal, District.

2. It is the case of the first respondent/claimant that on 08.02.2015, while he was riding his bicycle on Keelapalayam to Pullagoundampatti Road, a rider of TVS XL Super two wheeler bearing Registration No. TN-34-M-1877 came in a rash and negligent manner and dashed him. Due to the impact, he suffered grievous injuries. Thereafter, the claimant took treatment in various Hospitals. The second respondent, who is the owner of the two wheeler and the appellant, who is the insurer of the vehicle are liable to pay compensation to him. Hence, he made a claim for a sum of Rs.20,00,000/-.

3. The Insurance Company resisted the claim disputing the manner of accident as projected by the claimant, age, occupation and income of the deceased. They also denied their liability to pay compensation as the driver of the two wheeler had no valid driving licence.



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4. Before the Tribunal, the claimant examined himself as PW1 and the Doctor, who gave medical certificate, was examined as PW2 and Exs.P1 to P10 were marked. On the side of the Insurance Company, RWs.1 and 2 were examined and Exs.R1 to R7 were marked.

5. The Tribunal after analysing the entire evidence came to the conclusion that the accident had occurred due to the rash and negligent driving of the TVS XL Super two wheeler and awarded a compensation of Rs.1,76,200/- along with 7.5% interest and directed the appellant and the second respondent to pay the compensation.

6. The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the driver of the TVS XL Super two wheeler drove the vehicle without valid and effective driving license and hence the Insurance Company is not liable to pay any compensation to the claimant.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record carefully and meticulously.



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8. Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

9. It is the contention of the learned counsel for the Insurance Company that the second respondent had violated the conditions laid down in the policy as the rider of the TVS XL Super two wheeler had not possessed valid driving license. The Regional Transport Officer also issued a letter, which was marked as Ex.R6, stating that the driver of the two wheeler was not issued with any licence. Considering the materials and evidence available on record, the Tribunal rightly came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the TVS XL Super two wheeler and fixed the liability on the appellant Insurance Company. Since the driver of the vehicle had not possessed valid driving license, which is a breach of policy condition, the Tribunal ought to have permitted the appellant Insurance Company to pay the amount to the claimant at the first instance and thereafter recover the same from the owner of the vehicle.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the award amount as

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ordered by the Tribunal with interest, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the appellant Insurance Company shall proceed against the owner of the TVS XL Super two wheeler bearing Registration No. TN-34-M-1877 for recovery of the compensation amount. No costs. Consequently, the connected miscellaneous petition is closed.

02.06.2023

Speaking Order : Yes / No
Index : Yes / No
pvs

To

1. The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal, Namakkal
2. The Section Officer,
V.R.Section, High Court, Madras.



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A.A.NAKKIRAN, J.

pvs

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