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C.M.A.Nos.3786 and 3788 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A.Nos.3786 and 3788 of 2019

and

C.M.P.Nos.21806 & 21808 of 2019

United India Insurance Co.Ltd.,
Having branch office at Kotagiri
The Nilgiris District Kotagiri

.. Appellant in CMA No.3786 of 2019

Versus

1.V.Mohandass
2.A.Mani
3.S.Ravi

O.M.Sevana Gowder (died)

4.Seerayammal
5.S.Raman
6.S.Ramesh
7.D.Mani
8.R.Parvathi
9.D.Indira

.. Respondents in C.M.A.No.3786 of 2019

United India Insurance Co.Ltd.,
Having branch office at Kotagiri
The Nilgiris District Kotagiri

.. Appellant in CMA No.3788 of 2019

Versus

1.P.Jagadeeswaran

<https://www.mhc.tn.gov.in/judis>



C.M.A.Nos.3786 and 3788 of 2019

2.A.Mani

3.S.Ravi

O.M.Sevana Gowder (died)

4.Seerayammal

5.S.Raman

6.S.Ramesh

7.D.Mani

8.R.Parvathi

9.D.Indira

.. Respondents in C.M.A.No.3788 of 2019

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.04.2017 made in M.C.O.P.Nos.537 & 538 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

For all the Appeals

For Appellant	:	Mr. C. Paranthaman
For R1	:	Mr. R. Ranjith Kumar
For R5 to R9	:	Mr. A. Babbie
For R2 to R4	:	No Appearance

COMMON JUDGMENT

The Insurance Company has come forward with these appeals questioning the common judgment and decree dated 10.04.2017 passed in M.C.O.P. Nos .537 & 538 of 2013.

2. The claim petition was filed by the first respondent in these appeals.

As per the claim petition, on 04.07.2011 at about 8.10 p.m., the claimant in

M.C.O.P.No.538 of 2013 was riding the motorcycle bearing Registration



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No.TN-38-BB-0936. In the said motorcycle, the claimant in M.C.O.P.No.537 of 2013 was riding pillion. While the two wheeler was driven on the left side of Kunnur to Kothagiri road, near a place called Kannida Devi Nagar road, the driver of the lorry bearing Registration No.TN-63-9914 drove it in a rash and negligent manner and hit the two wheeler. In the impact, both the claimants sustained grievous injuries.

3. According to the claimants, the claimant in M.C.O.P. No. 537 of 2013 sustained fracture in his right elbow, knee and right wrist. During the hospitalization he had underwent a surgery for fracture and plates and screws were implanted. The claimant was aged 23 years at the time of accident and he he was working as a core maker in Indu Industries and earning a sum of Rs.6,000/- per month. He has filed the claim petition claiming compensation of Rs.5,00,000/-.

4. The claimant in M.C.O.P. No. 538 of 2013 states that he sustained fractures in his right elbow, right foot, cut injuries on right foot, right eyebrow, right side eye, right thigh etc. He also underwent surgery during which plates and screws were implanted. The claimant in M.C.O.P. No. 538 of 2013 was 23 years aged and he was also working as a core maker in a company called



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A.C.N. Industries, Kolipalayam, Coimbatore and receiving a salary of Rs.6,000/-. The claimant in M.C.O.P. No. 538 of 2013 also filed the claim petition claiming a sum of Rs.5,00,000/- as compensation.

5. Both the claim petitions were contested by the third respondent/ Insurance Company. The main defence of the Insurance Company is that the driver of the lorry was not in possession of a valid licence to drive the vehicle and there is a violation of policy condition. While so, it was only the owner of the lorry who is liable to pay the compensation and not the Insurance Company.

6. Before the Tribunal, common evidence was let in by the parties. The respective claimants examined themselves as P.W.1 and P.W.2 and Dr. K.Periyasamy was examined as P.W.3. Exs.P1 to P17 were marked on their behalf. On behalf of the respondents, R.W.1 to R.W.4 were examined and Exs.R1 to R6 were marked.

7. The tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.1,40,500/- as compensation for the claimant in M.C.O.P.No.537 of 2013 and Rs.1,04,500/- as compensation for the claimant in M.C.O.P.No.538 of 2013.



8. The learned counsel appearing for the appellant assailed the award passed by the Tribunal both in terms of liability and quantum. According to the learned counsel for the appellant, there is a breach of terms of the policy and that was not taken note of by the tribunal. The driver of the lorry did not possess a valid driving licence at the time of accident. The driving licence possessed by him expired even on 13.03.2010. The accident had occurred on 04.07.2011. As on the date of accident, the driver was not in possession of a valid driving licence. When there is a violation of conditions of policy the tribunal ought not to have directed the Insurance Company to pay the compensation amount. It was the only the owner of the lorry who is liable to pay the compensation to the claimants. It is also contended by the appellant that when there is a collision between two vehicles, the tribunal ought to have held that the claimants have also contributed for the accident and deductions ought to have been made towards contributory negligence. In this context, the learned counsel for the appellant placed reliance on Ex.B1-driving licence of the driver of the lorry and contended that the licence expired long back and as on the date of accident, the driver was not in possession of a valid driving licence. The Insurance Company also examined the officials from the Regional Transport Office and proved that the driver did not possess a valid driving licence. While so, the learned counsel for the appellant prayed for allowing the



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appeals by setting aside the common award passed by the Tribunal.

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9. On the above contentions we have heard the learned counsel for the respective first respondent in these appeals, who would only submit the compensation awarded by the Tribunal is very meagre and not in consonance with the nature of the injuries suffered by the claimants. The claimants have underwent surgery and had undergone enormous pain and sufferings for which adequate compensation has not been paid to them. In any event, the claimants did not prefer any appeal as against the award passed by the tribunal. The award passed by the tribunal is just and proper and prayed for dismissal of the appeals.

10. Heard the learned counsel appearing for both sides and perused the materials placed on record.

11. On the fateful day viz., 04.07.2011, there was an accident in which the claimants have suffered grievous injuries. They were admitted in hospital for the injuries suffered by them and had undergone surgery. The tribunal on analyzing the manner in which the accident had taken place has concluded that the driver of the lorry was at fault. Even the First Information Report was



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registered only as against the driver of the lorry/first respondent. The first respondent did not contest the claim petition and he was set ex-parte.

Therefore, the tribunal had drawn an adverse inference as against the first respondent and held that the accident had occurred due to the rash and negligent driving of the driver of the lorry. When the driver of the lorry was not examined and who is the best person to speak about the accident the claim of the appellant/Insurance Company that the driver cannot be held responsible for the accident or the claimants have contributed for the accident is not well founded. Therefore, the Tribunal is wholly justified in holding that the accident had taken place due to the rash and negligent driving of the driver of the lorry.

12. One of the main contentions urged on behalf of the appellant/Insurance Company is that the driver did not possess a valid driving licence to drive the vehicle. In this context, the tribunal in point No.12 had discussed that on behalf of the appellant three witnesses were examined. R.W.1 is the Junior Assistant working in the office of the Regional Transport Office, Udthagamandalam. According to R.W.1 as on 04.07.2011 the first respondent Mani (driver) did not renew the driving licence. R.W.2 is the Assistant Officer working in United India Insurance Co.Ltd., and he has



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deposed that the driver was charge sheeted by the investigation agency for having driven the vehicle without driving licence. R.W.3 is the Administrative Officer of the third respondent/Insurance Company. But, in the cross examination of R.W.3, she admits that the driving licence of the first respondent Mani was valid till 05.07.2011. Further R.W.4 is the Junior Assistant of the Regional Transport Officer, Udhagamandalam. It is through R.W.4, Ex.R8 was marked. Ex.R8 clearly shows that the first respondent was authorized to drive light motor vehicle from 24.11.2006. Therefore, the admission of R.W.3 in the cross examination clearly reveals that the arguments of the counsel for the appellant that the driver did not possess a valid driving licence is unacceptable.

13. As regards the quantum, this Court finds that having regard to the nature of injuries suffered by the claimants, the tribunal has awarded a very reasonable amount as compensation. The claimants have also filed document to show that they are earning a sum of Rs.6,000/- per month. Taking note of the documentary evidence, coupled with the medical records produced by the claimants, this Court concludes that the compensation awarded by the tribunal both under the pecuniary and non pecuniary heads are reasonable and they warrants no interference.



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14. In the result, these Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.1,40,500/- and Rs.1,04,500/- together with interest and costs are hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos. 537 & 538 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode. On such deposit, the respective 1st respondent/claimant in these appeals are permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, if any, lying to the credit of M.C.O.P.Nos.537 & 538 of 2013, if the entire award amount has been already deposited by them. Consequently, connected Miscellaneous Petitions are closed. No costs.

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A.A.NAKKIRAN. J.,

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To

1.The Special Subordinate Court,
Motor Accident Claims Tribunal,
Erode.

2.The Record Keeper,
V.R.Section,
High Court Madras,
Chennai.

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