



C.M.A.(MD)No.1674 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.1674 of 2008

The Branch Manager,
New India Assurance Co. Ltd.,
Pudukkottai.

... Appellant

vs.

1.Nallammal, W/o.Subbiah
2.Rajagunasekaran, S/o.Rajakannu

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 30.06.2008, passed in M.C.O.P.No.108 of 2005, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Special Court, Pudukottai.

For Appellant

: Mr.J.S.Murali

For 1st Respondent

: Mr.T.Leninkumar

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the judgment and decree, dated 30.06.2008, passed in M.C.O.P.No.108 of 2005, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Special Court, Pudukottai.



2. The Claim Petition was filed by the first respondent/accident victim alleging that while she was travelling in the pillion of a T.V.S. 50 vehicle driven by her relative, the tiffin carrier fall and therefore, she got down from the two wheeler and walked along the road to collect the said tiffin carrier. At that time, the Mahindra Maxi Pickup Vehicle, bearing temporary Registration No.TN-45-TCJ-3690, driven by its driver rashly and negligently and dashed against her, causing severe injuries all over her body. Initially, she was admitted in Alangudi Government Hospital on 14.09.2004 as inpatient and on the same day, she was shifted to Government Hospital, Pudukottai, for further treatment and got discharged after three months *i.e.*, on 13.12.2004. For the pain and suffering and loss of income, she has claimed a sum of Rs.7,00,000/- as compensation against the vehicle owner and the insurer.

3. The Motor Accident Claims Tribunal considering the evidence let in on behalf of the first respondent/claimant and the appellant/Insurance Company, arrived at a conclusion that the offending vehicle was registered temporarily and not registered permanently to ply regularly. Further, the driver of the offending vehicle had no valid driving licence to drive the goods vehicle and directed the owner of the vehicle as well as the Insurance Company to pay the compensation amount jointly and severally. On such conclusion, a sum of Rs.1,04,000/- was awarded as compensation with interest @ 7.5% p.a. from the date of claim petition till the date of realization.



4. Though the appeal is filed on various grounds, the learned counsel for the appellant submitted that the Tribunal erred in fixing the liability jointly and severally in spite of the fact that the owner of the vehicle has not registered the vehicle permanently, on that ground, the vehicle was seized by the R.T.O. for violating the Motor Vehicles Act, 1988. Further, for violation of the policy conditions, the Tribunal ought to have atleast ordered pay and recovery instead of fixing the liability jointly and severally.

5. The learned counsel for the first respondent/claimant submitted that the vehicle had a temporary Registration Certificate, which is sufficient to ply the vehicle on the road till the expiry of the temporary Registration Certificate. The accident occurred within the period of temporary registration and therefore, there is no violation of policy conditions. As far as the allegation of possessing of LMV driving licence, the learned counsel submitted that as per the recent judgment of the Apex Court, a person holding licence to drive light motor vehicle (LMV) can drive transport vehicle, which has less than 7500 Kilograms as its gross weight, without any special authorization and the Mahindra Maxi Pickup Vehicle, which involved in the accident, is below the said limit. However, a perusal of the document indicates that the said vehicle is above 7500 Kilograms and it was laden with goods and therefore, it is clear case of policy violation. Having violated the policy conditions, the owner of the vehicle is liable to pay compensation. In this case, the appellant/



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Insurance Company is liable to pay the compensation amount and entitled to recover it from the owner of the offending vehicle.

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6. With the above modification of the award of the Tribunal, the Civil Miscellaneous Appeal is partly allowed. No costs.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SMN2

04.01.2023

To

1.The Motor Accident Claims Tribunal
(Additional District and Sessions Judge),
Special Court, Pudukottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.

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JUDGMENT MADE IN
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