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C.M.A(MD)No.777 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2022

Pronounced on : 25.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.777 of 2012

P.L.A.Sales Corporation,
represented by its Manager,
C.Chockalingam,
Karur.

... Appellant / 3rd respondent

Vs.

1.N.Kaliammal
2.S.Suseela
3.N.Selvaraj

... 1st respondent / claimant

... 2 and 3 Respondents /
1 and 2 respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.26 of 2007, dated 23.11.2010 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Karur.

For Appellant : Mr.B.Saravanan

For R1 : No Appearance

For R2 - R3 : Mr.N.Shanmuga Selvam



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.26 of 2007, dated 23.11.2010 on the file of the Motor Accident Claims Tribunal/Additional Sub Court, Karur. The appellant is the third respondent in the claim petition. The first respondent is the claimant and the 2nd and 3rd respondents are the first and second respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 08.03.2006, when the petitioner was walking along the extreme left side of the Karur to Dharapuram main road, the second respondent came in a motor cycle in a rash and negligent manner and dashed against the petitioner. The petitioner sustained injuries, she was taken to the Rajinikanth Hospital, Karur. She under went two surgeries. She is permanently disabled. Before the accident, the petitioner was rearing cattle and was doing milk vending and was earning Rs.150/- per day. The third respondent is the dealer of the motor cycle and he has delivered the motor cycle to the first respondent without an insurance coverage. The first respondent is the owner of the vehicle, the second respondent is the driver and the third respondent is the



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dealer. All of them are responsible for paying compensation. The petitioner claim a sum of Rs.2,00,000/- as compensation.

3. Brief substance of the counter filed by the first and second respondents is as follows:

The second respondent drove the motor cycle in a careful and cautious manner. It was the petitioner who all of the sudden, attempted to cross the road and met with an accident. The period of treatment, medical expenditure, permanent disability, age, occupation and monthly income are all denied. The first respondent has paid the entire sale consideration, insurance policy premium amount and road tax charges of the vehicle. After all the payments were made the third respondent, has delivered the vehicle to the first respondent. The third respondent promised that they have paid the insurance premium. On a *bona fide* believe that the premium was paid and the policy was in force in the name of the first respondent, the first respondent permitted the second respondent to drive the vehicle. Hence, the third respondent is liable to pay compensation.



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4. Brief substance of the counter filed by the third respondent is as follows:

The third respondent is an authorized dealer for TVS products and he was engaged in the business of selling TVS motor cycle in Karur. At the time of delivery of the vehicle, it was informed to the first respondent that the vehicle should be put on roads only after due registration and after effecting valid insurance coverage. The first respondent represented that after taking delivery of the vehicle, she will insure the vehicle, at her own choice. The relationship between the third and first respondent was over on 27.02.2006 i.e on the date of sale. Therefore, the third respondent is not responsible for the risk subsequent to the sale.

5. Three witnesses (3) were examined and nineteen (19) documents were marked on the side of the petitioner. Three witnesses (3) were examined and no document was marked on the side of the respondents. The Tribunal has awarded a sum of Rs.1,00,000/- as compensation, to be paid by the respondents.



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6. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal is wrong in fixing the liability on the appellant. The appellant is the dealer of the two wheeler who was not liable to pay any compensation. A dealer cannot be held responsible under Section 166 of the Motor Vehicles Act. The Tribunal failed to consider that the appellant, being a dealer of the two wheeler, had contractual obligation till the date of delivery. But the accident has taken place after 10 days from the date of delivery of the vehicle.

7. On the side of the second and third respondents in the appeal, it is stated that the vehicle was not registered at the time of taking delivery of the vehicle. The respondents paid the entire amount including premium charges. Delivering a vehicle without registration, is the fault of the dealer. Only after the registration of the vehicle, the owner is liable to pay compensation. At the time of the accident, the vehicle was not registered and the second and third respondents are not responsible to pay compensation.



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8.Proviso 2 of Section 41(6) of the Motor Vehicles Act, 1988 reads as follows:

"Provided that in case of a new motor vehicle, the application for the registration of which is made under the second proviso to sub-section(1), such motor vehicle shall not be delivered to the owner until such registration mark is displayed on the motor vehicle in such form and manner as may be prescribed by the Central Government."

9.Hence, it is the duty of the dealer to make sure that the vehicle was registered before delivering the same to the owner. It is wrong on the part of the appellant to deliver the vehicle without registration. The appellant has not chosen to mention anything regarding the payment of premium alleged to have been paid by the owner of the vehicle. The payment of premium by the respondents 2 and 3, was not specifically denied by the appellant. No document was filed on the side of the appellant to prove that premium was not paid.

10.The Motor Vehicle Inspector Grade-II, who was examined as PW3, has deposed that it is the duty of the dealer to register the motor cycle and he cannot make a sale without a registration. He has also admitted that they will



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not register any vehicle, unless there is insurance that a dealer can sell the motor cycle only after it is insured.

11.The Manager of the appellant was examined as RW3. He has also admitted that the vehicle can be sold only after it was registered and insured. Section 42 of Central Motor Vehicles Rules, 1989, reads as follows:

*"42.Delivery of vehicle subject to registration -
No holder of a trade certificate shall deliver a Motor
Vehicle to a purchaser without registration, whether
temporary or permanent."*

12. Unless the vehicle was registered in the name of the purchaser, the dealer is the owner. The invoice in the name of the second respondent was marked as Ex.P5. The second respondent, was not having driving license, but the vehicle was delivered to the second respondent herein. Since the owner of the vehicle permitted the rider to run the vehicle without a valid driving license, the owner and the rider are also liable to pay compensation.

13.On the side of the appellant, it is stated that the quantum fixed by the Tribunal is excessive.



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14.PW2, Doctor assessed the disability at 25% and awarded Rs.1000/- per percentage of disability and awarded a sum of Rs.25,000/- for the disability, which is reasonable. As per the documents Ex.P11 and Ex.P12 and by considering the fact that the petitioner has undergone surgery and steel plates and screws were affixed, the Tribunal has awarded a sum of Rs.28,000/- towards medical expenses. To remove the plates and screws, further surgery is necessary and hence the Tribunal has awarded a sum of Rs.20,000/- towards future medical expenses, which is reasonable. The Tribunal has awarded Rs.12,000/- towards pain and sufferings, Rs.12,000/- towards loss of earning, Rs.1,000/- towards nutrition and Rs.2,000/- towards Transport expenses, which are all reasonable.

15.A perusal of the records, reveals that the quantum of compensation awarded by the Tribunal is reasonable. In the above circumstances, there is nothing sufficient enough to interfere with the orders of the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed.

(i) The quantum of compensation, Rs.1,00,000/- (Rupees One Lakh only) awarded by the Tribunal is hereby confirmed. The award amount shall carry interest at the rate of 7.5% per annum.



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(ii) The appellant is directed to deposit the entire compensation of Rs.1,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit and with proportionate costs to the credit of M.C.O.P.No.26 of 2007, dated 23.11.2010 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Karur, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant, the first respondent / claimant is permitted to withdraw the entire award amount of Rs.1,00,000/- (Rupees One Lakh only) (less any amount already withdrawn) with accrued interest and costs, less any amount already withdrawn by her. The claimant is not entitled to interest for the default period, if there is any.

25.01.2023

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

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R.THARANI, J.

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To

- 1.The Motor Accidents Claims Tribunal (Additional Sub Court),
Karur.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)No.777 of 2012

25.01.2023