



C.M.A.(MD)No.1853 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 08.02.2023

Delivered On : 28.04.2023

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1853 of 2013

The Regional Manager,

The Oriental Insurance Co.LTd.,

No.1858, South Veedhi,

Thanjavur Town and Munsif.

.. Appellant /2nd Respondent

Vs.

1.Chandra

.. 1st Respondent/ Petitioner

2.Elangovan

.. 2nd Respondent /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, made in M.C.O.P.No.935 of 2011, dated 23.04.2013, on the file of the Motor Accident Claims Tribunal – Additional District and Sessions Court- Special Court under Essential Commodities Act, Thanjavur.

For Appellant

: Mr.S.Veeranasamy

For Respondent No.2

: Mr.T.A.Ebenezer

For Respondent No.1

: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.935 of 2011, dated 23.04.2013, on the file of the Motor Accident Claims Tribunal – Additional District and Sessions Court-Special Court under Essential Commodities Act, Thanjavur. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.935 of 2011, is as follows:

On 14.04.2011, at about 2.00 pm., when the petitioner and one Ambujam, were walking along the extreme left side of the road, a two wheeler, bearing Registration No.TN-49-AEE-8287, came in a rash and negligent manner from the opposite direction and hit against the petitioner. The petitioner sustained injuries. The petitioner took treatment as inpatient from 14.04.2011 till 17.04.2011 in Thanjavur Medical College Hospital, then she took treatment as out patient. The petitioner was doing tailoring



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work and was earning Rs.4,000/- per month. The petitioner claimed a sum

of Rs.3,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.935 of 2011, is as follows:

The manner of accident stated in the petition is wrong. The petitioner has to prove that the first respondent vehicle was insured with the second respondent. The petitioner has to prove that the riders of the vehicle was having valid driving licence and the documents regarding the vehicle were valid. The rider of the two wheeler drove the vehicle in a slow and cautious manner. It was the petitioner, who suddenly crossed the road, without observing the traffic. The injuries, age, profession and disability are to be proved.

4. 2 witnesses were examined and 8 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.85,000/- as compensation to be paid by the second respondent at the first instance and the second respondent can recover the same from the first respondent.



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5. Against the order, the appellant / Insurance Company has filed

this appeal on the following grounds:-

The Tribunal failed to consider that the breach of policy condition was proved by the respondents. When the vehicle in question was driven without a valid driving licence, the order of pay and recover is not reasonable. The owner of the vehicle has committed fundamental breach of condition. The liability ought to have been fixed on the owner of the vehicle. The Tribunal is wrong in awarding Rs.30,000/- towards pain and sufferings, Rs.40,000/- towards loss of teeth, Rs.10,000/- towards other expenses.

6. On the side of the appellant, it is stated that it was only a simple injury, only teeth was broken. It was the first respondent, who suddenly crossed the road and invited the accident.

7. Copy of F.I.R was marked as Ex.P1. Driving Licence of the rider of the two wheeler was marked as Ex.P5. M.V.I. report was marked as Ex.P6. P.W.1 has deposed that it was the rider of the two wheeler, who was rash and negligent. Hence, it is decided that the rider of the two wheeler is responsible for the accident.



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8. A perusal of the records reveals that the driving licence was marked as Ex.P5. This Court called for the particulars from the R.T.O office, Thanjavur. It is seen that rider of the two wheeler was having valid driving licence to drive LMV vehicles, with transport endorsement, but, there was no licence for driving a two wheeler, on the date of accident, that is on 14.04.2011. The rider of the two wheeler obtained driving licence to drive two wheeler only on 23.05.2011. Hence, it is decided that the owner of the two wheeler is liable to pay compensation and that the appellant is to be exonerated from the liability.

9. On the side of the appellant, it is stated that the injuries sustained by the claimant is simple in nature. Discharge summary was marked as Ex.P2. Disability certificate was marked as Ex.P7. X-ray was marked as Ex.P8. P.W.2- Doctor was examined on the side of the claimant. The Doctor has stated that the claimant lost four of her teeth, the Tribunal has awarded Rs.40,000/- for loss of four teeth. Considering the fact that the claimant has to fix artificial teeth, it is decided that the award of Rs. 40,000/- for loss of four number of teeth is reasonable.



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10. The Tribunal has awarded Rs.30,000/- towards pain and sufferings and Rs.15,000/- towards transport expenses and temporary loss of income. Considering the fact that the loss is only with regard to the teeth and not with regard to the entire body, the compensation for pain and sufferings is reduced to Rs.20,000/- and the compensation for transport expenses and temporary loss of income is reduced to Rs.10,000/-

11. The total compensation is calculated as follows:-

Loss of Teeth	:	Rs.40,000/-
Pain and sufferings	:	Rs.20,000/-
transport expenses and temporary loss of income	:	Rs.10,000/-
Total compensation	:	Rs.70,000/-

12. This appeal is allowed.

(i) The appellant is exonerated from the liability. The appellant is permitted to withdraw the deposited amount, if any.

(ii) The compensation is reduced from Rs.85,000/- to Rs.70,000/-.



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(iii) The second respondent herein / owner of the vehicle is directed to deposit the compensation of Rs.70,000/- with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire compensation along with accrued interest and costs, on filing of proper petition before the Tribunal. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

28.04.2023

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal –

Additional District and Sessions Court- Special Court under Essential Commodities Act, Thanjavur.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1853 of 2013

28.04.2023