



C.M.A(MD)No.1935 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2022

Pronounced on : 19.01.2023

CORAM

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

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The Oriental Insurance Company Limited,
Rep., by its Branch Manager,
Office at Malaiyakkal,
M.S.M.College Opposite,
Kayamkulam, Alapuzhai District,
Kerala State.

...Appellant/3rd Respondent

Vs

1.Jannath Peerthouse

... 1st Respondent/Petitioner

2.Biju

... 2nd Respondent/1st Respondent

3.Subaithal Usman

... 3rd Respondent/2nd Respondent

*[2nd and 3rd respondents remained
exparte before the lower Court]*

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 23.07.2012 made in M.C.O.P.No.258 of 2010 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Judge, Tenkasi.



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For Appellant : Mr.C.Jawahar Ravindran

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.258 of 2010 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Judge, Tenkasi. The appellant is the third respondent, first respondent is the claimant, second and third respondents are the first and second respondents in the original claim petition.

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

On 15.06.2009, at about 2 p.m., when the petitioner was travelling in a car bearing registration number KL 29 A 3215 that belong to the second respondent, the first respondent drove the car in a rash and negligent manner and the car capsized. The petitioner sustained injury. He was admitted in the Government Hospital. Then he took treatment in a private hospital. The petitioner was doing real estate and he was earning Rs.9,000/- per month. The petitioner claim a sum of Rs.10 Lakhs as compensation.



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

The first respondent was not having valid driving licence. Policy conditions are violated. The third respondent is not liable to pay compensation. The claim is excessive.

4. Two witnesses were examined and eight documents were marked on the side of the petitioner. One witness was examined and three documents were marked on the side of the respondents. The Tribunal awarded a sum of Rs.1,21,500/- as compensation to be paid by the third respondent and the third respondent was permitted to recover the same from the respondents 1 and 2.

5. Against the award, the third respondent filed this appeal on the following grounds:

The lower Court failed to consider Section 168 of the Motor Vehicles Act. There was no valid insurance coverage. The disability fixed by the Tribunal is excessive. The award itself is excessive. The appellant is not liable to pay compensation. It is the duty of the owner of the vehicle to prove that the driver was having valid driving license.



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6. On the side of the appellant it is stated that the appellant sent notice to the owner of the car, to produce the driving license of the driver and to furnish the insurance particulars. The postal covers were returned and were marked as Ex.R2 and Ex.R3. The driver was not having valid driving licence. Policy conditions were violated.

7. The First Information Report was marked as Ex.P1. Copy of the charge sheet was marked as Ex.P5. Observation Mahazar was marked as Ex.P3, rough sketch was marked as Ex.P6. MVI report was marked as Ex.P4. On the basis of the evidence of P.W.1 and on the basis of Ex.P1, Ex.P3 and Ex.P6, the Tribunal fixed the responsibility on the driver of the Car which is reasonable.

8. Charge sheet was filed under Section 279 and 338 of IPC read with Section 3 and 181 of Motor Vehicles Act. The appellant has sent notice for production of the driving licence. Both the notices were returned unserved. On the basis of the evidence of P.W.1 and on the basis of Ex.P5, the Tribunal came to the conclusion that the driver was not having valid driving licence at the time of accident which is reasonable.



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9.A copy of the Accident Register was marked as Ex.P2. Disability certificate was marked as Ex.P7. X-ray was marked as Ex.P8. P.W.2-Doctor has deposed that the petitioner sustained 30% disability. The Tribunal fixed the disability at 25% and awarded a sum of Rs.37,500/- as compensation. The Tribunal awarded Rs.50,000/- towards pain and sufferings, Rs.5,000/- towards future medical expenses, Rs.9,000/- towards temporary loss of income for the period of treatment, which are all reasonable.

10.The Tribunal gave a finding that the compensation is to be paid by the third respondent and the third respondent was permitted to recover the same from the first and second respondents. It is seen that the policy copy was marked as Ex.R1 and the policy was valid at the time of accident. The petitioner is a third party. Hence, it is decided that the liability fixed by the Tribunal is reasonable.

11.For the reasons stated above, it is decided that there is nothing sufficient enough to interfere with the orders of the tribunal and hence this appeal is dismissed.



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12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.1,21,500/- (Rupees One Lakh Twenty One Thousand and Five Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant / Insurance Company is directed to deposit the entire compensation of Rs.1,21,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.258 of 2010 on the file of the Principal Motor Accidents Claims Tribunal cum Principal Sub Judge, Tenkasi, within a period of eight weeks from the date of receipt of a copy of this order and permitted to recover the same from the second and third respondents;

(iii) On such deposit being made by the appellant / Insurance company, the first respondent herein/claimant is permitted to withdraw the entire award amount of Rs.1,21,500/- with proportionate interest and cost.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal cum Principal Sub Judge, Tenkasi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-delivery Judgment made in
C.M.A(MD)No.1935 of 2013

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