



CMA(MD).No.589 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.03.2023

PRONOUNCED ON : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.589 of 2019

M/s.Cholamandalam MS General
Insurance Company Ltd.,
Nos.3 & 4, Dindigul High Road
Kalavaasal
Madurai 625 010

... Appellant

vs.

1.Mohan

2.Mahalakshmi

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed in M.C.O.P.No.432 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Madurai, dated 28.09.2018.

For Appellant : Mrs.K.R.Shivashankari

For R1 : Mr.M.Suresh

For R2 : Mr.AN.Ramanathan



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J U D G M E N T

The appeal has been filed by the Insurance Company challenging the award of the Accident Claims Tribunal, Dindigul in MCOP.No.432 of 2013 primarily on the ground of liability.

2.The claimant is an injured person who had travelled in a TATA ACE Vehicle by the side of the driver as a salesman of an oil store carrying the goods. According to the claimant, the vehicle was driven in a rash and negligent manner by the driver by name Manikumar and it got capsized. The claimant got injured in his left shoulder, left wrist and injuries in various parts of the body. The claimant had contended that he was drawing a salary of Rs.12,500/- per month and he prayed for a compensation of Rs.5,00,000/-.

3.The owner of the vehicle namely the first respondent had remained exparte and the insurer had filed a counter contending that the said Manikumar was not on wheel at the time of accident. One Sebastin was the driver at the time of accident who did not possess valid driving license. That apart, an F.I.R has been lodged after a delay of 22 days from the date of accident. Therefore, the Insurance Company had



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contended that they are not liable to pay compensation as claimed by the petitioner.

4.The Tribunal after considering the oral and documentary evidence, arrived at a finding that the accident had taken place on 18.09.2012 and the F.I.R has been registered on 10.10.2012. Though it is contended on the side of the Insurance Company that one Sebastin was on the wheel when the accident had happened, the Police Authorities had registered the F.I.R as against the Manikumar and he has also been charge sheeted. Thereafter, the said Manikumar has paid the fine in the Court. No proceedings have been initiated by the Insurance Company alleging that there was impersonation. The Tribunal further found that only the said Manikumar was the driver at the time of accident.

5.As far as the quantum of compensation is concerned, the Tribunal found that the injured claimant had spent a sum of Rs.54,200/- towards medical expenses as per Exhibit P4. The claimant had suffered 15% of permanent disability as per Exhibit P8 and calculating at the rate of Rs.3000/- per percentage, the Tribunal arrived at Rs.45,000/- for the partial permanent disability of the claimant. Though the claimant had claimed Rs.12,500/- as his monthly income, the Tribunal has taken



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Rs.6000/- as the monthly income and arrived at the compensation based upon the said monthly income and totalling a sum of Rs.1,68,000/-.

Challenging the same, the present appeal has been filed by the Insurance Company.

6.The primary contention of the learned counsel for the appellant is that the vehicle was not driven by Manikumar at the time of accident. The vehicle was driven by one Sebastin who did not possess valid driving license. The owner of vehicle namely the first respondent in the claim petition had raised a claim for own damage before the Insurance Company. In the said claim petition, the owner has referred one Sebastin as the driver of the vehicle at the relevant point of time. Therefore, according to the learned counsel appearing for the appellant the claimant and the owner of the vehicle have colluded together and they have changed the name of the driver of the vehicle who was driving the vehicle at the time of accident.

7.The learned counsel for the appellant had further contended that the owner of the vehicle had raised a claim for own damage with the Insurance Company indicating that one Sebastin is the driver of the vehicle at the time of accident. However, after the delay of 22 days,



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an F.I.R has been registered as if one Manikumar is the driver at the time of accident. Therefore, it is highly doubtful whether Sebastin or Manikumar is the driver of the vehicle. The said Sebastin was not having any valid license at the time of accident. Therefore, the Insurance Company is not liable to pay compensation.

8.Per contra, the learned counsel for the respondents had contended that at the time of registering the F.I.R, the said Manikumar alone was shown as driver and a charge sheet has been laid by the Police as against the Manikumar. The officials of the insurance company have not raised an objection or lodged a complaint alleging that there was impersonation of the driver at the relevant point of time.

9.Further it is contended by the learned counsel appearing for the claimant that the own damage claim was raised at the work shop. Therefore, it was not signed by the first respondent herein. The contents of the own damage application cannot be taken into consideration. Hence, he prayed for sustaining the order passed by the Tribunal.

10.I have considered the submissions made on either side and perused the materials available on record.



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11.The main defence of the Insurance Company is that the commercial vehicle was not driven by Manikumar at the time of accident, but by one Sebastin who did not possess a valid driving license. The only document that is sought to be relied upon by the Insurance Company is the application for own damages alleged to have been raised by the owner of the vehicle for the same accident.

12.A perusal of the said application reveals that it is an on-line application without signature of the owner of the vehicle. It is more probable that it was raised by the service station to which the vehicle was taken for repair. According to the learned counsel for the Insurance Company, the own damages claim petition was rejected on the ground that the driver namely Sebastin was not holding proper driving licence. However, no document has been placed before the Court. Therefore, it is clear that the Insurance Company was not able to establish that one Sebastin was driving the vehicle at the relevant point of time. On the other hand, the F.I.R has been lodged as against one Manikumar and he has also been charge sheeted by the Police. Therefore, the primary contention of the Insurance Company that there was some impersonation is not legally sustainable, especially in view of the fact that the Insurance



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Company has not laid any complaint alleging there was impersonation on the side of the owner of the vehicle in changing the driver at the relevant point of time. Therefore, this Court has no hesitation to come to the conclusion that the vehicle was driven by Manikumar who was holding a valid driving license at the time of accident.

13.As far as the issue of quantum is concerned, the injured claimant has sustained fractures in his left shoulder and left wrist. The Tribunal has relied upon the medical bills under Exhibit P4 and the disability under Exhibit P8 and also the notional income at the rate of Rs.6,000/- p.m. for a salesman in an oil store to arrive at a total quantum of Rs.1,68,000/- as compensation.

14.In view of the above said facts, this Court does not find that the quantum is either unreasonable or exorbitant. There is no merit in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs.

16.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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1. The Motor Accident Claims Tribunal
(Special Sub Court), Madurai,

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.589 of 2019

16.03.2023