



C.M.A.(MD)No.468 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.03.2023

Delivered On : 05.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.468 of 2014

The Branch Manager,
National Insurance Company Ltd.,
Tiruchengode.

.. Appellant

Vs.

1.K.Sivakumar
2.C.Nagaraj Pandi

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 23.06.2010 passed in M.C.O.P.No.57 of 2005 on the file of the Motor Accident Claims Tribunal/Sub Court, Palani.

For Appellant
For 1st Respondent
For 2nd Respondent

: Mr.S.N.Murugesan
: Mr.C.Sankar Prakash
: Mr.B.Rooban

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.57 of 2005 dated 23.06.2010, on the file of the Motor Accident



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Claims Tribunal, Sub Court, Palani.

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2.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 claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.57 of 2005, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 19.10.2004. The Tribunal has awarded a sum of Rs. 65,000/- (Rupees Sixty Five Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.57 of 2005 is as follows:

On 19.10.2004, when the petitioner was travelling in a bicycle as a pillion rider, a mini lorry bearing registration No.TN-27-F-2495 came in a rash and negligent manner and dashed against the cycle. The petitioner sustained injuries and he lost two of his teeth. The petitioner took treatment in Palani KV Hospital and he claimed a sum of Rs.1,00,000/- (Rupees One Lakh only) as compensation.

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



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The manner of accident and mode of treatment are to be proved. The petitioner has to prove his age. The mini lorry was driven by its driver in a slow and cautious manner. It was the rider of the bicycle, Sabrimalai who drove the vehicle in a rash and negligent manner and he invited the accident. The driver of the lorry was not having driving licence. The policy conditions are violated and the claim is excessive.

5.On the side of the claimant, two witnesses were examined and six documents were marked. On the side of the respondents therein, one witness was examined and three document were marked. After trial, the Tribunal has awarded a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) as compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The Tribunal failed to consider that even in spite of repeated summons, the owner and driver of the mini lorry failed to produce the driving licence. The Tribunal failed to appreciate the evidence of R.W.1. The Tribunal failed to consider that the doctor who was examined as P.W.2 had given a disability certificate stating that the first respondent had lost two of his teeth and that it was not mentioned in Ex.P2, wound certificate. The Tribunal failed to consider that the disability certificate was issued four years after the date of accident. The Tribunal failed to consider that there



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was corrections in the wound certificate and in the date of discharge. The Tribunal is wrong in awarding Rs.45,000/- (Rupees Forty Five Thousand only) towards permanent disability and Rs.10,000/- (Rupees Ten Thousand only) towards pain and suffering and Rs.5,000/- (Rupees Five Thousand only) for transportation expenses.

6.On the side of the appellant, it is stated that Ex.R2 and Ex.R3, summons were sent to the owner of the vehicle and the driver of the vehicle to produce the driving licence. The driving licence was not produced by them. Since there was no particulars regarding the licence was available, the Official from the RTO could not be examined. The insurance company is to be permitted to recover compensation from the owner of the vehicle. The disability certificate was issued after a lapse of four years from the date of the accident and the disability certificate is not valid.

7.On the side of the first respondent, it is stated that the date of accident was on 19.10.2004. The name of the driver was Manikandan S/o, Gopal Gounder. An additional type set was filed on the side of the claimant wherein the driving licence of the driver Manikandan S/o, Gopal Gounder was filed. LMV driving licence was issued to the driver on 30.03.1998. Badge endorsement was issued on 16.04.1998. HMV licence was granted on 25.09.2001. The copy of the status report from the Parivahan Seva reveals that the driving licence was renewed and is still

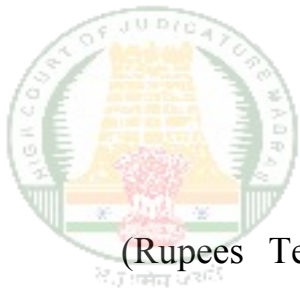


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active. The driving licence number is TN-59-19980000679. Except the question with regard to driving licence, no other points were raised in the appeal and prayed the appeal to be dismissed.

8.A perusal of the records reveals that the driver of the mini lorry was having driving licence at the time of the accident. The insurance company failed to examine any witness with regard to the non availability of driving licence. The copy of FIR was marked as Ex.P1. The copy of chargesheet was marked as Ex.P3 and the judgment of the criminal Court was marked as Ex.P4. In Ex.P1, Ex.P3, Ex.P4, the driver of the mini lorry was mentioned as the accused. Considering the oral evidence of P.W.1 and P.W.2, it is decided that the accident had happened due to the rash and negligent driving of the mini lorry. The copy of the policy was marked as Ex.P1. The policy was effective at the time of accident. Considering the additional type set, it is seen that the driver of the mini lorry was having valid driving licence. Hence, it is decided that the liability fixed by the Tribunal is reasonable.

9.The wound certificate was marked as Ex.P2, X ray was marked as Ex.P5 and disability certificate was marked as Ex.P6. P.W.2 Doctor was examined and he assessed the disability as 30%. For the disability, the Tribunal has awarded Rs. 45,000/- as compensation which is reasonable. The Tribunal awarded Rs.10,000/-



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(Rupees Ten Thousand only) towards pain and suffering, Rs.5,000/- towards transportation expenses and Rs.5,000/- towards extra nourishment, which are reasonable. There is no dispute regarding the quantum fixed by the Tribunal. Hence, it is decided that the quantum fixed by the Tribunal is reasonable.

10. In the result, this Civil Miscellaneous Appeal is **dismissed**. The claimant is entitled to a compensation of Rs.65,000/- (Rupees Sixty Five Thousand only) with interest at the rate of 7.5% from the date of the claim petition till the date of deposit and with costs. The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of deposit and with costs and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent is permitted to withdraw the award amount with proportionate interest and costs, after deducting any amount received by him earlier. The claimants are not entitled for interest for the default period, if there is any. No Costs.

05.04.2023

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

- 1.The Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.II
Trichirappalli.
- 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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