



C.M.A.(MD)No.449 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.02.2023

Delivered On : 27.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.449 of 2017

Iffco Tokyo General Insurance,
Company Ltd.,
Rep. By Branch Manager,
No.58-B, T.P.K.Road,
Pazhangatham, Madurai 625 003.

.. Appellant

Vs.

1.Boothathan
2.Vairamuthu

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 19.12.2016 made in M.C.O.P.No.373 of 2012 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Tirunelveli.

For Appellant	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.S,Siva Subramanian
For 2 nd Respondent	: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.373 of 2012 dated 19.12.2016, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli.

2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the 2nd respondent herein is the 1st respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.373 of 2012, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 13.07.2012. The Tribunal has awarded a sum of Rs. 11,39,000/- (Rupees Eleven Lakhs and Thirty Nine 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.373 of 2012 is as follows:

On 13.07.2012, at about 11.15 a.m., when the petitioner was riding the two wheeler bearing registration No.TN-74-Z-7443 along with Raja Gopal as pillion rider, a JCB vehicle bearing registration No.TN-76-M-4915 came in a rash and negligent manner and dashed against the motorcycle. The petitioner sustained injuries. He was given first aid in Tirunelveli Government Hospital and then he was



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admitted in Sri Sakthi hospital and he took treatment as 'inpatient' from 13.07.2012 till 29.08.2012. He has undergone surgeries on 13.07.2012, 15.07.2012 and on 23.07.2012. Implants were affixed. The age of the petitioner at the time of the accident was 23 years. The petitioner was working as the loadman and he was earning Rs.500/- per day. The petitioner claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

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

The age, income, profession and nature of injuries are all denied. The amount claimed is excessive. The manner of the accident was wrongly narrated in the petition. It was the motorcycle, which tried to overtake the other vehicle came in a rash and negligent manner. On seeing the same, the driver of the JCB stopped the vehicle and even then the motorcycle dashed against the JCB vehicle. The driver of the JCB was having only licence to drive the LMV vehicles. There is no endorsement in the licence permitting him to drive the JCB vehicle. The second respondent is not liable to pay compensation.

5.On the side of the claimant, 2 witnesses were examined and eight documents were marked. On the side of the respondents therein, two witnesses were



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examined and three documents were marked. After trial, the Tribunal has awarded a sum of Rs.11,39,000/- (Rupees Eleven Lakhs and Thirty Nine 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 policy does not cover the victim. The insurance company is not liable to pay the compensation. The terms of the policy was violated. JCB is a special kind of vehicle, for which special policy of insurance is to be issued. The coverage for third party is not automatic. The coverage is governed by the terms and conditions of insurance policy. The quantum of award is excessive. There was no functional disability to the injured claimant and the application of multiplier formula is wrong.

6.On the side of the appellant, it is stated that JCB is a special vehicle and special endorsement to that effect is to be obtained in the driving licence of the driver. The driver of the JCB has no valid driving licence. R.W.1 is the driver of the JCB vehicle. R.W.2 is the official from the RTO office. A letter from the RTO and MV reports were marked as Ex.R1 and Ex.R3. R.W.2 has deposed that the driver has licence only for driving LMV vehicle. There is no endorsement for driving the JCB. There is no permit for the vehicle and hence, the insurance company is exonerated of the liability.



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7.P.W.1 has deposed that it was the JCB, which came in a rash and negligent manner. The copy of the FIR was marked as Ex.P1. The driving licence was marked as Ex.P4. Since FIR was registered against R.W.1, the driver of the JCB vehicle, the Tribunal did not give much weightage to his evidence. Considering the evidence of P.W.1 and Ex.P1, the Tribunal fixed the responsibility on the driver of the JCB vehicle. From the evidence of R.W.2 and Ex.R1, it is decided that R.W.1, the driver of the vehicle was not having valid driving licence at the time of accident. He was having licence only to drive LMV vehicle. There is no endorsement permitting him to drive a JCB.

8.The insurance company failed to produce any independent witness to prove that the driver of the JCB was not rash and negligent. Hence, it is decided that the owner of the JCB was responsible for paying the compensation. Since the insurance policy was effective and the policy was not disputed by the appellant, it is decided that the insurance company is liable to pay the compensation at the first instance. Since the owner of the vehicle admitted that the driver was not having valid driving licence to drive the vehicle, the insurance company is permitted to recover the amount from the owner of the vehicle. Since the appellant failed to raise any objections with regard to the validity of the insurance policy, the order of pay and recover is reasonable.



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9.As per the above discussion, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.373 of 2012 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Tirunelveli.

10.In the result, this Civil Miscellenaous Appeal is **dismissed**. The 1st respondent herein is entitled to a sum of Rs.11,39,000/- (Rupees Eleven Lakhs and Thirty Nine Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

10.The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization 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. The appellant herein is entitled to recover the same from the second respondent herein. On such deposit, the first respondent herein is permitted to withdraw his respective share with proportionate interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

27.03.2023

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

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Tirunelveli.
- 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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