



CMP No.3703 of 2024
in CMA No.1780 of 2023

N.ANAND VENKATESH, J.,

This petition has been filed by the appellant for receiving additional evidence by way of marking certain documents which according to the appellant are very crucial to substantiate the stand taken by the appellant in this case.

2.The case of the claimant is that on 26.10.2019 he was riding his two wheeler at Minjur in the service road and at about 5.30 p.m., when the two wheeler was in the 400 feet Outer Ring Road in front of Vellanoor Bharathi Nagar Bus Stop, the offending vehicle belonging to the appellant was driven in a rash and negligent manner and dashed the two wheeler resulting in the claimant sustaining grievous injuries.

3.The appellant had filed a counter to the effect that he had a learner's license at the time of accident and he was accompanied by his father who possessed a valid driving license. Thus, the appellant took a stand to the effect that there was no violation of any law in the appellant driving the car with a learner's license, since he was accompanied by his father who had a valid driving licence. The appellant had also



taken a stand that there was no negligence on his part and that the claimant alone had lost control of the two wheeler and had fallen down and as a result of which the accident took place.

4.The Tribunal on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the appellant. Having come to such a conclusion, the Tribunal after fixing the total compensation of a sum of Rs.8,67,877/- which was rounded off Rs.8,67,880/-, applied the pay and recovery method and directed the Insurance Company to pay the compensation to the claimant and recover the same from the appellant. This is in view of the fact that the appellant did not substantiate before the Tribunal that he was accompanied by his father and that his father had a valid driving license. Therefore, the Tribunal had applied this principle.

5.During the pendency of this appeal, the appellant has filed this petition for letting in additional evidence. The appellant is relying upon the final report that was filed in Crime No.1416 of 2019 which shows that the appellant was accompanied by his father in the car and that the appellant had driven the car in a rash and negligent manner resulting in the accident. This final report is relied upon only to show the



father of the appellant had accompanied the appellant at the time of accident. The second document that is sought to be relied upon by the appellant is the driving license of his father. The appellant claims that his father who accompanied him had a valid driving license. The third document pertains to certain photographs which are relied upon by the appellant to show that "L-Board" was displayed in the vehicle both on the front and back of the car and therefore, the relevant Rules were followed by the appellant at the time of driving the car with the learner's driving licence.

6.The documents that are sought to be relied upon by the appellant as additional evidence cannot be marked straight away without examining the appellant. Unfortunately, the appellant has not undertaken this exercise before the Tribunal. Ultimately, if the appellant is able to substantiate his defence, the direction given by the Tribunal for pay and recovery alone can be interfered and the entire liability can be saddled on the Insurance Company. However, before doing so, an opportunity must be given to the Insurance Company to defend themselves in this petition.

7.This Court exercises its jurisdiction under Order XLI Rule 23 of C.P.C., and directs the Special Sub Court to deal with Motor Accident Claims Cases (MACT No.II), Tiruvallur, to record the evidence of the appellant and mark the documents



subject to its admissibility, relevancy and proof. While doing so, opportunity shall be given to the Insurance Company to cross-examine the appellant. Upon recording the evidence, the same shall be sent to this Court and this Court will thereafter decide this appeal on merits.

8.*Stricto sensu*, the appellant ought to have undertaken this exercise before the Tribunal and there is no convincing reason as to why the appellant did not let in evidence before the Tribunal when such an opportunity was available before the Tribunal. Therefore, this Court wants to put the appellant on terms. Hence, there shall be a direction to the appellant to pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to the Insurance Company, within a period of two weeks from the date of receipt of copy of this order. The Trial Court shall ensure that this cost is paid to the Insurance Company before proceeding further to comply with the directions issued by this Court.

9.The appellant shall be present before the Special Sub Court to deal with Motor Accident Claims Cases (MACT No.II), Tiruvallur Court on 05.06.2024 at 10.30 a.m. The Tribunal shall record the evidence on the same day or can fix another day subject to the convince of the Court and on that day, the evidence of the appellant shall be



recorded and the documents shall be marked and the cross-examination shall also be completed on the same day. On completion of this exercise, the original records along with the recorded evidence and the documents marked shall be sent back to this Court on or before 21.06.2024.

10.It is made abundantly clear that the matter is sent back to the Trial Court for a very limited purpose to give an opportunity to the appellant to establish that the Car was driven following the necessary Rules by having a person accompanied with the appellant with a valid driving license and the car was also having 'L-Board' as required under Rules. The appellant shall not be permitted to let in any evidence on the issue of negligence which has already been decided by the Tribunal. This opportunity is given only to see if the entire liability should be fastened against the Insurance Company and the finding on the pay and recovery ordered by the Tribunal requires any interference.

11.The Registry is directed to send back the entire original records to the Special Sub Court to deal with Motor Accident Claims Cases (MACT No.II), Tiruvallur and the Tribunal shall ensure that the original records is sent back to this Court along with the evidence recorded and the additional documents marked.



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12.In view of the order passed in CMP No.3703 of 2023, dated 29.04.2024, post these appeal under the caption 'For Orders' on 26.06.2024.

29.04.2024

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