



Civil Miscellaneous Appeal No.798 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.798 of 2023

and

C.M.P.No.7339 of 2023

Alamelu
W/o.Palani

... Appellant

Vs.

1.Selvaraj
S/o.Thangavel

2.The Manager,
United India Insurance Co. Ltd.,
77, Oriental Complex,
A.A.Street, Salem - 636 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2023 made in M.C.O.P.No.56 of 2018 on the file of Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellant : Ms.R.Adithyashri
for Mr.N.Manoharan

For Respondents : Ms.I.Malar [R2]



JUDGMENT

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The owner of the offending vehicle has filed the present appeal against the award passed by the Motor Accident Claims Tribunal, Sub Court, Rasipuram, in M.C.O.P.No.56 of 2018, dated 30.01.2023.

2. The first respondent/claimant filed the claim petition on the ground that he was standing on the left side of the road near the bus stop at Rasipuram on 05.10.2017 and at about 05.15 p.m, the bus owned by the appellant was driven in a rash and negligent manner by the driver and it hit the claimant as a result of which the claimant sustained grievous injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal, on considering the facts and circumstances of the case and 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 driver of the offending vehicle. Having rendered the above finding, the Tribunal proceeded to go into the question as to whether the driver of the bus had a valid driving licence.



A finding was given to the effect that the driver did not have a valid driving license on the date of accident. In view of the same, the Tribunal ordered for pay and recover. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.4,66,756/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical Bills	2,81,756/-
2.	Pain and suffering	75,000/-
3.	Disability	50,000/-
4.	Loss of income	20,000/-
5.	Extra nourishment	10,000/-
6.	Transportation expenses	10,000/-
7.	Loss of amenities	10,000/-
8.	Attender charges	10,000/-
	Total	4,66,756/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

4. The owner of the offending vehicle has filed this appeal questioning the pay and recovery ordered by the Tribunal.



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5. Heard Ms.R.Adithyashri, learned counsel for appellant / claimant and Ms.I.Malar, learned counsel appearing for the second respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. When the matter came up for hearing on 27.06.2024, this Court passed the following order:

"The appellant is the owner of the offending vehicle. The Tribunal has imposed the entire liability on the appellant and the insurance company has been exonerated on the ground that the driver of the offending vehicle did not possess a valid driving licence on the date of the accident. In order to arrive at such a finding, the Tribunal has relied upon Ex.P2, which is the report of the Motor Vehicle Inspector and also the evidence of RW-1, who was the Regional Transport Officer, through whom Exs.X1 to X3 have been marked. Ex.X1 is the authorization letter issued in favour of RW-1. Ex.X2 is the vehicle inspection record and Ex.X3 is the details of the registered vehicle.

2. On carefully going through Ex.P2, it is seen from Sl.No.7 that the particulars regarding the driving licence has been specifically mentioned in the report. The driving licence number



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has been mentioned and the validity period has also been mentioned. Under the category of transport vehicle, the validity was upto 05.03.2018. Under the category of non-transport vehicle, the validity was upto 14.07.2021. The accident had taken place on 05.10.2017. Therefore, it was contended that there was a valid licence available as on the date of the accident even as per Ex.P2 and the same has not been taken into consideration by the Tribunal. A photocopy of the licence has also been placed before this Court at the time of hearing. The driving licence number tallies with the driving licence number that has been recorded at Sl.No.7 of Ex.P2.

3. On the face of it, the finding of the Tribunal as if the driver did not possess a valid driving licence by relying upon Ex.P2, looks improbable. That apart, if the insurance company had any doubt on the driving licence mentioned in the MVI report, they could always test its genuineness in the Regional Transport Office and while examining the Regional Transport Officer before the Court.

4. If ultimately, the driver of the vehicle owned by the appellant possessed a valid driving licence, the insurance company will have to pay the compensation. In the absence of the same, the owner of the vehicle will have to pay the compensation.

5. Learned counsel for second respondent seeks for some time to get instructions in this regard and to get necessary particulars.

Post this appeal under the caption 'Part Heard Cases' on 08.07.2024."

9. The case was once again listed for hearing on 08.07.2024 and this Court passed the following order:

"The learned counsel for the 2nd respondent Insurance Company submitted that there is no clarity as to whether there was a valid driving licence available as on the date of the accident



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i.e., on 05.10.2017. It is quite evident from the materials placed before this Court that there was a valid driving licence in the name of the driver of the offending vehicle. The same is evident from the particulars submitted before this Court which shows that the license is valid from 17.03.2021 to 16.03.2031 for non-transport category and 17.03.2021 to 16.03.2026 for transport category. The only clarification required is as to whether the license was subsisting as on the date of accident.

2.It is not necessary for this Court to remand the matter for this purpose and those particulars can be sought for from the Regional Transport Office itself. Hence, the learned Additional Government Pleader can be directed to take instructions in this regard.

3.Post this case under the same caption on 11.07.2024."

10. Pursuant to the above order, this Court directed learned Additional Government Pleader to take instructions from the concerned Regional Transport Office, Salem West. The said document contains all the driving license transaction history. At Sl.No.6, it is seen that by virtue of the endorsement dated 05.03.2015, the driving license was renewed under the non-transport category till 14.07.2021 and under the transport category till 05.03.2018. It is, therefore, quite evident that as on 05.10.2017, when the accident took place, the driver had a valid driving licence under both categories. In view of the above, it is apparent that the principle of pay and recover cannot be adopted and insurance company



alone has to pay the compensation. The finding of the Tribunal ordering for pay and recover is hereby set aside. The award of the Tribunal is sustained except for the finding of pay and recover. It is made clear that the second respondent insurance company shall pay the compensation and the same cannot be recovered from the appellant.

11. It is brought to the notice of this Court that the appellant was directed to deposit a sum of Rs.2,00,000/- [Rupees Two Lakhs only] as a condition for granting interim stay in this case. Since this appeal is allowed and the liability fastened against the appellant is interfered, the amount of Rs.2,00,000/- deposited by the appellant shall be permitted to be withdrawn with accrued interest, if any.

12. The second respondent insurance company is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation



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remains unaltered.

N.ANAND VENKATESH, J.

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In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

11.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To
The Motor Accident Claims Tribunal,
Sub Court, Rasipuram.

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