



C.M.A.Nos.2760, 2763 & 2764 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.Nos.2760, 2763 & 2764 of 2022

and

C.M.P.Nos.21556, 21564 & 21571 of 2022

The Manager,
National Insurance Company Limited,
Hero Vertical 101 106, BMC House N1,
Cannaught Place,
New Delhi 110 001.

... Appellant in all C.M.A's.

Vs.

1. Minor Harini
2. Srinivasan

... Respondents in C.M.A.No.2760 of 2022

1. Sasikumar
2. Srinivasan

... Respondents in C.M.A.No.2763 of 2022

1. Gowri
2. Srinivasan

... Respondents in C.M.A.No.2764 of 2022

Prayer in C.M.A.No.2760 of 2022: Civil Miscellaneous Appeal filed



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under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree passed in M.A.C.T.O.P.No.988 of 2015 dated 08.01.2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perambalur.

Prayer in C.M.A.No.2763 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree passed in M.A.C.T.O.P.No.986 of 2015 dated 08.01.2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perambalur.

Prayer in C.M.A.No.2764 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree passed in M.A.C.T.O.P.No.987 of 2015 dated 08.01.2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perambalur.

Appearance in all C.M.A's.

For Appellant : Mrs.N.B.Sureka
For R1 : Mr.S.P.Yuvaraj
For R2 : No appearance

COMMON JUDGEMENT

Challenging the fixation of the liability as well as the negligence by the Tribunal vide Award dated 18.03.2022 in M.A.C.T.O.P.Nos.986, 987 & 988 of 2015, the appellant/Insurance Company has preferred the present appeals.

2. Since all the appeals arise out of the common award, they



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have been taken up together and being disposed of by this common judgement.

3. On 26.09.2015, at about 10.00 p.m., when the first respondent in C.M.A.Nos.2760 & 2764 of 2022 were travelling as pillion riders in a two wheeler namely, Yamaha Ray bearing Reg.No.TN 46 P 5191, driven by the first respondent in C.M.A.No.2763 of 2022 proceeding from Chettikulam-Kuroor, they were hit by a two wheeler namely, Hero Splendor Pro bearing Reg.No.TN 46 R 7237, which came from opposite direction in a rash and negligent manner. As a result of which, the first respondent in all the above Civil Miscellaneous Appeals, sustained grievous injuries all over their body. Hence, the claimants have filed claim petitions before the Tribunal, claiming compensation for the injuries sustained by them.

4. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.30,000/- in C.M.A.No.2760 of 2022, a sum of Rs.1,16,000/- in C.M.A.No.2763 of 2022 and a sum of Rs.1,14,000/- in C.M.A.No.2764 of 2022 respectively towards



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compensation to the first respondent in all above Civil Miscellaneous Appeals. Aggrieved by the said quantum of compensation, the Insurance Company/appellant have filed these appeals.

5. The learned counsel for the appellant/Insurance Company contended that, based on the Motor Vehicles Inspector's report i.e., Ex.P2, the rider of the insured vehicle namely Hero Splendor Pro bearing Reg.No.TN 46 R 7237, did not produce the valid driving licence before the Licensing Authority at the time of accident. Further, she submitted that the on behalf of the appellant, RW.1 staff of RTO, was examined and he deposed that the rider of the offending vehicle did not possess licence at the time of accident and hence, the owner of the offending vehicle has violated the policy condition, no insurance can be claimed and the Tribunal has not considered this aspect and erroneously held that both the owner of the offending vehicle and the appellant are severally liable to pay the compensation, which requires to be set aside and the learned counsel also pointed out that the Tribunal ought to have ordered pay and recovery.



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6. The learned counsel for the first respondents/claimants would contend that the Tribunal has taken into consideration all the available documents and the appellant/Insurance company, in order to exonerate their liability, the should have proved that they have intimated to the Insuree, i.e. the owner of the vehicle regarding the production of driving licence of the rider of the offending vehicle. But the appellant/Insurance company has not given any such intimation to the insurer/owner of the vehicle and no driving licence was produced before the Tribunal. In such circumstances, the Tribunal ought to have fastened the entire liability on the appellant/Insurance Company, but fastened the liability on the owner of the vehicle/2nd respondent herein as well as the appellant/Insurance, which requires interference.

7. Heard the learned counsel for the appellant as well as the learned counsel for the first respondent and perused the material available on record.

8. The main contention raised on behalf of the appellants is that the owner of the offending vehicle has not produced the licence of the rider and the Motor Vehicle Inspector in his report Ex.P2 also mentioned



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that the rider of the offending vehicle has not produced the licence at the time of accident and therefore, the Tribunal ought to have fastened the entire liability on the owner of the offending vehicle, the 2nd respondent herein. It is also contended by the learned counsel for the appellant that while fastening the liability 50:50 on the owner of the offending vehicle and the appellant/Insurance company, the Tribunal ought to have ordered pay and recovery.

9. The contentions raised on behalf of the appellant/Insurance Company, in the opinion of this Court, do not have any merit consideration. It is not in dispute that the insurance policy was subsisting on the date of the accident and in order to exonerate its liability on the ground that the owner of the offending vehicle has violated the conditions of the policy as the rider of the vehicle has not produced the licence, the appellant/Insurance Company ought to have given intimation to the insuree, calling upon him to produce driving licence of the rider of the vehicle and if he does turn up to prove that he was holding valid driving licence, then the appellant Insurance company can claim the theory of pay and recovery. In the present case, admittedly, the appellant/Insurance company has not sent any intimation to the



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insuree/owner of the offending vehicle, calling upon whether the rider of the vehicle was holding valid driving licence. Further, no steps have been taken to examine the rider of the offending vehicle before the Tribunal. Further, in Ex.P2, the Motor Vehicle Inspector only mentioned driving licence was not produced, it does not mean that the rider of the vehicle was not possessing the driving licence. In such circumstances, this Court is constrained to fasten the entire liability on the appellant to pay the compensation to the claimants.

10. In the result, these Civil Miscellaneous Appeals filed by the appellant/Insurance Company are dismissed. The appellant-Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.Nos.986, 987 & 988 of 2015 on the file of Motor Accident Claims Tribunal, Subordinate



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Krishnan Ramasamy,J.
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Court, Perambalur. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimants, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.02.2024

Index : Yes / No

NCC : Yes / No

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To

1. The Motor Accident Claims Tribunal,
Subordinate Court, Perambalur
2. The Section Officer,
V.R. Section,
High Court, Madras.

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