



C.M.A.(MD) No.1872 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1872 of 2013

and

M.P.(MD) No.2 of 2013

The Branch Manager,
Represented by
National Insurance Company Limited,
Nagercoil Branch, North Car Street,
Nagercoil & Post.

... Appellant

Vs.

1.Rosili
W/o.Muthusamy

2.Minor Werlin
C/o.Rosili
Represented through her grandmother
& guardian Rosili, the first respondent

3.S.Subeen
S/o.Sudhir

4.V.B.Ramesh Kumar,
S/o.Balakrishnan Nair

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree passed by the



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Motor Accident Claims Tribunal, Sub Court, Kuzhithurai, in M.C.O.P.No.
28 of 2006 dated 20.02.2012.

For Appellant : Mr.D.Sivaraman

For R1 & R2 : No appearance

For R4 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the finding of the Motor Accident Claims Tribunal [Sub Court], Kuzhithurai holding that the appellant, Insurance Company, is liable to pay compensation.

2. The first and second respondents filed a claim petition before the Tribunal stating that on 08.01.2005, while they were walking on the road, a two-wheeler insured with the appellant, Insurance Company, came in a rash and negligent manner and caused grievous injuries to them.

3. The rider of the two-wheeler, namely, the third respondent herein, filed a counter before the Tribunal denying the averments made in the claim petition.



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4. The fourth respondent herein, the owner of the vehicle, remained *ex parte* before the Tribunal.

5. The appellant, Insurance Company, filed a counter before the Tribunal stating that the accident took place only due to the negligence of the first and second respondents/claimants and that the rider of the two-wheeler did not have a valid driving licence, and therefore, the appellant was not liable to pay compensation.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the first respondent/first claimant is entitled to Rs.26,500/- and the second respondent/second claimant is entitled to Rs.53,700/-, totalling Rs.80,200/-.

7. The learned counsel for the appellant, Insurance Company, submitted that since the Tribunal held that the rider of the two-wheeler did not possess a valid driving licence, the appellant ought to have been exonerated. The learned counsel fairly submitted that they are not questioning the quantum of compensation awarded by the Tribunal.



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WEB COPY 8. The only question involved in the instant appeal is whether the appellant, Insurance Company, should be fully exonerated from the payment of compensation.

9. This Court, on perusal of the award of the Tribunal, finds that the Tribunal held on facts that the rider of the insured two-wheeler did not have a valid driving licence. The Tribunal also held that the appellant should satisfy the award in the first instance and thereafter recover the same from the owner. In view of the settled position of law that even if there is a violation of the terms of the contract of insurance, the Insurance Company can be directed to pay the compensation and thereafter recover from the owner, this Court finds no infirmity in the award of the Tribunal. Hence, the award is confirmed.

10. The appellant, Insurance Company, is directed to deposit the compensation of Rs.80,200/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of 4 weeks from the date of receipt of a copy of this Judgment.



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11. On such deposit, the first respondent/first claimant is permitted to withdraw her share along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

12. The second respondent/second claimant was minor at the time of filing of the claim petition in 2005. It is noticed that he would have now attained majority. Therefore, the second respondent/second claimant is permitted to file an application before the Tribunal to record his majority and to withdraw his share along with proportionate interest and costs.

13. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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- 1.The Sub Judge,
Motor Accident Claims Tribunal,
Kuzhithurai,
Kanyakumari District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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