



C.M.A.(MD)No.214 of 2013

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Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.214 of 2013
and
MP(MD) Nos.1 and 2 of 2013

V.Sannappan

... Appellant/1st Respondent

Vs.

1. T. Perumal

...Respondent/Petitioner

2. The United India Insurance Co Ltd.,
No.10/18, Kuppanna Gounder Complex
Erode Main Road,
Velayuthampalayam
Karur District

..Respondents/2nd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award amount in M.C.O.P.No.93 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Karur dated 11.02.211 and consequently fix the entire liability on the part of the second respondent.

For Appellant : Mr.S.Gokulraj

For R-1 : Mr.N.Sudhagar Nagarajan

For R-2 : Mr.A.S.Mathiyalagan



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.93 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Karur dated 11.02.211, wherein the first respondent herein has filed claim petition before the Tribunal and the same was allowed by the Tribunal. As against the order passed by the Tribunal the first respondent has filed the present appeal.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The brief averments of the petition filed before the Tribunal are as follows:

On 05.04.2009 at about 12.30 pm., when the petitioner was proceedings in his two wheeler bearing Reg. No.TN 47 L 6697 and when he was going near Kadambankurichi -Mettupalayam main road, a van bearing Reg. NO. KA 19 5005 came in a rash and negligent manner and dashed against the petitioner, thereby he sustained injuries, permanently disabled and he incurred a sum of



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Rs.70,000/ towards medical expenses. The first respondent vehicle was insured with the second respondent. Hence he has filed a petition seeking compensation of Rs.4,00,000/-

4. The brief averments of the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or facts. The petitioner has to put to strict proof to the injuries sustained by him and the manner of accident. The driver of the first respondent has no valid license to drive the vehicle on the date of accident. The respondent denied the age, income and occupation of the petitioner. The second respondent is not liable to pay any compensation to the petitioner since the accident took place due to the negligence on the part of the petitioner.

5. Before the Tribunal the first respondent was set exparte. In order to prove the case of the petitioner, they have examined P.W.1 and P.W.2 and marked documents Exs.P.1 to P.13. On the side of the respondents, R.W.1 was examined and Exs.R1 to R4 were marked.

6. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of



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Rs. 1,03,460/- with interest @ 7.5% per annum from the date of petition till the realization of the amount. The second respondent was directed to deposit the amount and thereafter can recover the same from the first respondent. As against the order of the Tribunal, the present appeal has been filed by the owner of the vehicle/first respondent on various grounds.

7. The learned counsel appearing for the appellant would contend that the appellant/ first respondent vehicle was insured with the second respondent /second respondent on the date of accident and the appellant/ first respondent also had license to drive the vehicle but it is the duty of the insurance company to prove that the driver of the appellant/first respondent has no valid license and the insurance company has to take steps to prove the same but the Tribunal without considering the above said aspects ordered for pay and recovery. Therefore the order passed by the Tribunal is liable to be set aside as against this appellant/first respondent.

8. The learned counsel appearing for the first respondent/ petitioner would contend that the accident took place due to the negligence of the first respondent driver and the vehicle was insured with the second respondent on the date of accident, thereby



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the Tribunal has awarded a fair compensation and the dispute is in respect of quantum of award. The Tribunal ordered to pay and recovery since the driver of the first respondent has no license to drive the vehicle on the date of accident. Hence this appeal is liable to be dismissed.

9. The learned counsel appearing for the second respondent/second respondent would contend that though the appellant / first respondent vehicle was insured with the second respondent/ second respondent on the date of accident, the driver of the appellant /first respondent had no valid license to drive the vehicle and thereby there is a violation of conditions of policy. The Tribunal after taking into consideration all the aspects directed the insurance company to pay the amount and then recover the same from the appellant/first respondent. The driver of the appellant/ first respondent had license till 15.03.2009 but the accident was occurred on 05.04.2009. Therefore on the date of accident the driver has valid license and the same has been proved through Ex.P. 4 and evidence of P.W.1 and Exs.R.1 to R.4 clearly shows that there is a violation of conditions of policy. Hence the Tribunal ordered to pay and recovery. Therefore, the present appeal is liable to be dismissed.



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10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute with regard to the involvement of the vehicle in the accident and the negligent driving of the driver of the first respondent. The Tribunal also after analyzing the evidences adduced on both side fixed the liability on the driver of the appellant/first respondent. The appellant/first respondent also not disputed the negligence on the part of the driver of the first respondent. The present appeal has been filed only as against pay and recovery of the order of the Tribunal. According to the appellant/first respondent the vehicle was insured with the second respondent/ second respondent and on the date of occurrence the driver of the appellant/ first respondent had valid license, but there is no proof to show that the driver of the appellant/ first respondent has valid license on the date of accident i.e., 15.03.2009. Therefore on the date of accident on 05.04.2009 the driver of the appellant /first respondent had no valid license. On the side of the second respondent/second respondent they have marked



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Ex.R.4 copy of driving license of the driver and it reveals that it was valid till 15.03.2009, but the accident took place on 05.04.2009. There is no contra evidence adduced by the appellant /first respondent to prove that the driver of the first respondent had valid license on the date of accident and the license which expires on 15.03.2009 was renewed subsequently . In the absence of any contra evidence adduced by the appellant/first respondent the evidence of second respondent/second respondent is acceptable.

12. Further the learned counsel appearing for the appellant has filed an application to receive the documents in MP(MD) No.2 of 2013. On careful perusal of the above application the petitioner has produced the same copy of licence of the driver of the first respondent which is valid upto 15.03.2009 and there is no document produced by the petitioner / appellant to show that the said license was renewed subsequently within the period mentioned under the Motor Vehicle Act. Therefore the documents produced by the petitioner/ appellant is no way helpful to decide the case and the documents produced by the petitioner/ appellant has not satisfied the condition mentioned under Order 41 and Rule 27 of the C.P.C. Therefore this petition has no merits and deserves to be dismissed.



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13. Since the appellant/petitioner has not proved his case that the driver of the appellant /first respondent vehicle had valid license to drive the vehicle on the date of accident and therefore the order passed by the Tribunal is correct and there is no infirmity or perverse found in the order of the Tribunal. Therefore as discussed supra this Court is of the opinion that this appeal has no merits and deserves to be dismissed.

14. According to this Civil Miscellaneous Appeal stand dismissed. No costs. Consequently connected miscellaneous petitions are closed.

05.02.2024

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

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Karur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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