



C.M.A.(MD)No.1221 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1221 of 2024

1.M.Girija
2.M.Nirosha

... Appellants/Petitioners

Vs.

1.B.Karnesan
2.IFFCO TOKIO General Insurance Company Ltd.,
No.82, Preetham Plaza,
Ground & 1st Floor,
Chandra Gandhi Nagar,
Ponmeni, Madurai – 625 010.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.02.2022 in M.C.O.P.No.1909 of 2017 on the file of the District and Sessions Court, (Special Court for Communal Riots Enquiry)/Motor Accidents Claims Tribunal, Madurai and award enhanced compensation of Rs.5,00,000/-.

For Appellants : Mr.N.Sudhagar Nagaraj

For R2 : Mr.V.Sakthivel



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JUDGMENT

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The instant appeal is filed seeking enhancement of compensation.

2. It is represented by the learned counsel for the 2nd respondent that, against the very same award, the insurance company had preferred an appeal in CMA(MD)No.598 of 2023 challenging the finding on liability. This Court, by a detailed order dated 21.12.2023, held that since the borrower of the insured vehicle did not possess a valid license, the claimants are not entitled to compensation even towards personal accident coverage. The relevant portion of the order of this Court reads as follows:

10. Considered the arguments of the learned counsel for the appellant and perused records of the case. There is no dispute that the accident was taken place due to the rash and negligent riding of the deceased Manikandan as seen from Ex.P.1 – F.I.R. It is the specific case of the 2nd respondent/ Insurance Company that since the deceased, who was the owner of the vehicle, was not having any valid driving license at the time of accident, the Insurance Company is not liable to pay any compensation and even compensation under Personal Accident Coverage. On perusal of records, the petitioners have not established that their deceased son was having



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driving license at the time of accident. For awarding compensation under Personal Accident Coverage, certain policy principles should be followed, particularly the vehicle has to be insured and the driver had to possess valid driving license. The citations relied on by the appellant/Insurance Company insisted the settled principle that the Insurance Company is not liable to pay any compensation if the driver/owner was not having valid driving license at the time of accident.

11. The burden of proof shifted upon the petitioners to substantiate that their deceased son was having valid driving license at the time of accident. The petitioners failed to substantiate the same. On perusal of award, the Tribunal has correctly held in point No.1 that the petitioners did not produce the driving license of the deceased and since the accident was invited by the deceased himself, the 2nd respondent/Insurance Company was not liable to pay compensation. However, the Tribunal awarded compensation under personal accident coverage. Therefore, as rightly contended by the appellant/2nd respondent and in view of the judgments of this Court relied on by the appellant side, that the owner/borrower of the vehicle who is not holding a valid driving license at the time of accident, will not be entitled to invoke personal accident policy also. Thus, the Tribunal has miserably failed to properly apply the above legal principle settled by the Hon'ble Supreme Court and by this Court. Therefore, the award passed by the Tribunal



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warrants interference and the Civil Miscellaneous Appeal has to be allowed”.

3. Since this Court has already held that the claimants are not entitled to any compensation, the question of enhancement of compensation does not arise. Hence, this Court finds no merit in the appeal, and the same is dismissed. No costs.

16.10.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. The District and Sessions Court,
(Special Court for Communal Riots Enquiry)/
Motor Accidents Claims Tribunal, Madurai

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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Judgment made in
C.M.A(MD)No.1221 of 2024

16.10.2024