



C.M.A(MD)No.1451 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A(MD)No.1451 of 2024

and

C.M.P(MD)No.15499 of 2024

The Branch Manager,
National Insurance Company Ltd.,
Vijaya Complex,
706, Thenkasi Road,
Rajapalayam,
Virudhunagar District.

... Appellant/2nd Respondent

-Vs-

1.Gnanaguru
2.Vanniaraj

... Respondent/Petitioner

... Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1998, to set aside the judgment and decree dated 24.11.2023 made in M.C.O.P.No.21 of 2019 by the Motor Accident Claims Tribunal, Subordinate Judge, Sivakasi.

For Appellant : Mr.N.S.Ramakrishna Dass
For R1 : Mr.M.Jothi Basu

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Insurance Company



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against the award, dated 24.11.2023 made in M.C.O.P.No.21 of 2019 on the file of the Motor Accident Claims Tribunal/ Subordinate Court, Sivakasi, as regards the liability and on quantum.

2.The facts as set out in the claim petition are stated in brief:

On 17.12.2017 at about 03.30 p.m., the claimant was riding a two wheeler bearing Registration No.TN-84-Y-3379 along Rajapalayam to Alangulam main road, in order to go to his residence, near Sankaramoorthipatti Angalamman Kovil, he turned to the right side after giving signal, in the same direction another two wheeler bearing Registration No.TN-84-C-4935, came at a high speed in a rash and negligent manner and hit him from behind. Due to the said impact, he suffered fracture over thigh besides other injuries. He was taken to Rajapalayam Government Hospital and thereafter shifted to Rajapalayam Sakthibala Hospital and took treatment till 17.12.2008. Due to the rash and negligent driving of the rider of the first respondent vehicle, the accident occurred. Therefore, the first respondent, who is the owner of the offending vehicle and the second respondent, who is the insurer of the first respondent vehicle are liable to pay compensation to the claimant herein.



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3.Per contra, it was stated in the counter that the petitioner is put to strict to proof his income and the manner in which the accident occurred. The rider of the first respondent two wheeler did not possess driving licence at the relevant point of time. As the policy condition is violated by the owner of the vehicle viz., the first respondent/the Insurance Company is not liable to pay any compensation to the claimants.

4.At trial, on the claimant's side, the claimant has been examined as P.W.1. 19 documents have been marked. On the respondent's side, two witnesses have been examined and 5 documents have been marked. Ex.C.2 is the learner license issued to the claimant.

5.As regards the non-possession of valid driving license by the claimant, one Gnaneswaran, who is the staff of Regional Transport Office, has been examined as R.W.1. It is his evidence that on 23.11.2008, the learner license was issued to Muthukrishnan, S/o.Pitchamani, and thereafter, no license was issued to him and the learner license issued to the said Muthukrishnan is marked as



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Ex.C.2. Therefore, the learned counsel for the appellant would contend that though the said Muthukrishnan was in possession of the learner license, that cannot be considered as a valid driving license and thereby, the Insurance Company is not liable to pay the compensation.

6.As regards the liability, the Tribunal held that as per the evidence of R.W.1, since the said Muthukrishnan was in possession of learner license, it cannot be considered as a invalid one and concluded that the second respondent, Insurance Company cannot escape from the liability to pay compensation.

7.As regards the quantum, the Tribunal has fixed the income of the claimant at Rs.10,000/- per month and for three months, the loss of income was calculated at Rs.30,000/-. As per the disability assessed by the Medical Board, for one percent Rs.5,000/- based on the fracture and injuries suffered by the claimant was calculated and a sum of Rs.2,60,000/- was granted by the Tribunal for partial permanent disability. For pain and sufferings, an amount of Rs.50,000/- was granted. For transportation charges and for extra nourishment, an amount of Rs. 10,000/- was granted under each head. For medical bills, an amount of Rs.



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1,09,563/- was granted and for attendant charges, an amount of Rs.12,000/ was ordered. The Tribunal, in all, awarded the compensation of Rs.4,82,563/-.

8.The learned counsel for the appellant would vehemently contend that the said Muthukrishnan, who drove the first respondent's two wheeler, did not possess valid driving license at the relevant point of time. Hence, the first respondent has violated the policy condition by allowing to ride his vehicle by person, who did not possess valid driving license. He would further contend that because of the same, only the first respondent is liable to pay compensation and not the second respondent. As regards the quantum, the Tribunal has granted Rs. 5,000/ per percentage, which is on the higher side. It is his further argument that the amount of Rs.10,000/- was fixed as the monthly income and the loss of income for three months granted a sum of Rs.30,000/ is also on the higher side.

9.It has come on record through P.W.1 that the claimant was working as a poojari in a temple, marked as Ex.P.19. The Tribunal has disregarded the income certificate and fixed the notional income at Rs.10,000/- per month. The date of the accident is 17.12.2018. In the given circumstances, the notional income



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fixed by the Tribunal cannot be found fault with.

10.From the medical records, it appears that the claimant suffered fracture in right femur besides head injury. The District Medical Board has assessed the disability of the claimant at 52%. The age of the claimant is 59. The claimant being 59 years old, due to the Comminuted inter trochantric fracture in right femur and therefore, he would definitely find difficulty to do the poojari work as he did before. In the given circumstances, per percentage Rs.5,000/- is calculated and for 52% disability by the Tribunal, the amount of Rs.2,60,000/- was granted for partial permanent disability. This Court finds no good reasons to disturb the said findings of the Tribunal.

11.The claimant is stated to be a poojari in a temple. As the accident had taken place in the year 2018, fixation of notional income of Rs.10,000/ appears to be reasonable. For the fracture suffered by the claimant, loss of income is calculated for three months, which is also quite reasonable. As regards the other heads also, the amounts granted by the Tribunal are reasonable and acceptable and therefore, it need not be interfered with.



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12.As regards the learner license, it is useful to extract the observations made by the Apex Court in *National Insurance Co. Ltd vs Swaran Singh & Ors.*, reported in **2004(1)TNMAC 104(SC)**, wherein it has been stated that a person holding learner's licence would also come within the purview of duly licensed. Such licence is granted in terms of the provisions of the Motor Vehicles Act.

13.The learner licence is also a licence within the meaning of provision of the Motor Vehicles Act and it cannot therefore be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the Act.

14.In this regard, it is relevant to extract Section 4(3), Section 7(2),



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Section 10(2) and Section 14 of Motor Vehicles Act, 1988.

Section 4(3): No learners licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

Section 7(2): No person under the age of eighteen years shall be granted a learners licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learners licence.

Section 10(2)A: Learners licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) motor cycle without gear; (b) motor cycle with gear; (c) [adapted vehicle]; (d) light motor vehicle; [(e) transport vehicle;] (i) road-roller; (j) motor vehicle of a specified description.

14.Currency of licences to drive motor vehicles. - (1) A learners licence issued under this Act shall, subject to the other provisions of this Act, be



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effective for a period of six months from the date of issuance of the licence.

(2)A driving licence issued or renewed under this Act shall,

(a)in the case of a licence to drive a transport vehicle, be effective for a period of [five years]: [*]

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of [three years and renewal thereof shall be subject to such conditions as the Central Government may prescribe; and]

(b) in the case of any other licence, subject to such conditions as the Central Government may prescribe, if the person obtaining the licence, either originally or on renewal thereof, -(i)has not attained the age of thirty years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of forty years; or(ii)has attained the age of thirty years but has not attained the age of fifty years on the date of issue or, renewal thereof, be effective for a period of ten years from the date of such issue or renewal; or (iii)has attained the age of fifty years but has not attained the age of fifty-five years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of sixty years; or(iv)has attained the age of fifty-five years on the date of



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issue or as the case may be, renewal thereof, be effective for a period of five years from the date of such issue or renewal.

Section 7 of the Act, explains about the restrictions on the granting of learner's license.

15. Therefore, the law is well settled that even the learner's license is a valid license. It is pertinent to note that Ex.R.2 license was issued to the rider of the first respondent's vehicle on 23.11.2018 just a month before the date of the accident. If that is the position of law, it should not lie in the mouth of the second respondent that the learner's license is not a valid one and the second respondent cannot avoid liability to pay compensation.

16. In view of the above, this Civil Miscellaneous Appeal stands dismissed.

17. The Insurance Company/appellant is directed to deposit the award amount of Rs.4,82,563/- (less the amount already deposited if any) together with



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interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.21 of 2019 on the file of Motor Accidents Claims Tribunal /Sub Court, Sivakasi, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

18.On such deposit being made, the first respondent / claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also closed.

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NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge,
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R. KALAIMATHI,J.

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