



C.M.A. (MD) No. 273 of 2014

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Dated: 13.02.2024

CORAM:

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

C.M.A.(MD) No. 273 of 2014

and

M.P.(MD) No. 1 of 2014

The Branch Manager
United India Insurance Co. Ltd,
Branch Officer, K.P.V. Complex, I floor
Panthalkudi Road,
Aruppukottai

.. Appellant/second respondent

Vs.

1. Sauriyath Beevi
2. P. Balamurugan

.. 1st Respondent/Petitioner
.. 2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2012 in M.C.O.P.No. 107 of 2010 on the file of the Motor Accident Claims Tribunal/Sub Ordinate Judge, Paramakudi.

For Appellant : Mr.A.Shajahan

For R1 : Mr.M.S.Jeyakarthik

For R2 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed Motor Accident Claims Tribunal, Sub Ordinate Judge, Paramakudi in M.C.O.P.No. 107 of 2010 dated 25.07.2012, wherein the first respondent herein has filed a claim petition before the Tribunal seeking compensation of Rs.3,00,000/- due to the injuries sustained by him in the road accident. The tribunal has awarded a sum of Rs. 93,240/- towards compensation Being aggrieved by the order Tribunal the second respondent/ Insurance company has preferred this 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 21.06.2010 at about 3.30pm when the petitioner was proceeding in the Madurai Mandampam National highway near Soundari Petrol bulk a Hero Honda bearing Reg.No. TN 65 Z 9049 belonging to the first respondent insured with the second



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respondent came in a rash and negligent manner and dashed against the petitioner, due to which he sustained grievous injuries and the accident took place due to the negligence on the part of the driver of the first respondent and thereby he claimed a sum of Rs.3,00,000/- towards compensation.

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

The petition is false and not maintainable and the same is liable to be dismissed *limine*. The petitioner has to put to strict proof of the averments made in the petition. The accident was not occurred due to the negligence on the part of the driver of the first respondent and the same was occurred due to the negligence of the petitioner. The respondents denied the age, income and occupation of the petitioner. The driver of the first respondent had no valid license on the date of accident and thereby the second respondent is not liable to pay any compensation to the petitioner.

5. Before the Tribunal the petitioner has examined P.W.1 and P.W.2 and marked Exs.P.1 to P.12. On the side of the respondent they have not examined any witness and not marked any documents.



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6. After evaluating the oral and documentary evidences adduced on either side, the Tribunal has awarded a sum of Rs. 93,240/- towards compensation. As against the said order of tribunal, the present appeal has been preferred on various ground including the ground that the driver of the first respondent has no valid license and the thereby the second respondent is not liable to pay any compensation.

7. The learned for the appellant would contend that the first respondent herein has filed a petition before the Tribunal for claiming compensation alleging that he sustained injuries due to the accident. The accident took place due to the negligence on the part of the driver of the first respondent and the vehicle was insured with the second respondent and thereby the respondents are liable to pay compensation. It is admitted by the appellant/second respondent that the vehicle was insured with this appellant on the date of accident but the driver of the vehicle had no valid license on the date of accident thereby they violated the conditions of policy, hence the second respondent is not liable to pay any compensation. The above said fact would reveal from Ex.p.4/ M.V.I report . In the M.V.I report/Ex.P4 it is mentioned that the driving license was not produced therefore this Court can infer that the driver of the vehicle



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had no valid license on the date of occurrence. The tribunal without considering the same awarded a sum of Rs.93,240/- by directing the appellant/second respondent to pay the compensation.

8. The learned counsel appearing for the respondent would contend that the accident took place due to the negligence on the part of the driver of the first respondent and the first respondent/petitioner has proved the negligence of the driver of the first respondent by examining the witnesses and First Information Report also registered as against the driver of the second respondent/first respondent. The vehicle was insured with the appellant/second respondent on the date of accident. The appellant/second respondent has not examined any witnesses to prove his contention and merely because of the endorsement made in the Motor Vehicle inspection report alone is not sufficient to prove that the driver of the first respondent/petitioner has no license on the date of occurrence. The appellant/second respondent failed to examine any witness of officials of R.T.O office to prove his contention. Therefore the Tribunal after considering all the facts correctly awarded fair and just compensation by directing the appellant second/ respondent to pay the amount with interest, therefore the appeal is liable to be dismissed.



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9. 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?

10. In this case, there is no dispute that the accident was happened due to the negligence of the driver of the first respondent. The appellant/ second respondent also not disputed the nature of accident and only filed this appeal on the ground of liability. According to the appellant/second respondent the driver of the first respondent had no valid license on the date of accident and thereby the appellant/second respondent is not liable to pay compensation to the first respondent/petitioner.

11. In this context the appellant/second respondent relied on the document Ex.P.4/ Motor Vehicle Inspection report. In the Ex.p.4 there is an endorsement that at the time of inspection no driving license of the driver was produced. Apart from this document no other evidence adduced the appellant/second respondent and they have not examined any witnesses. The appellant/second respondent neither examined any RDO officials nor issued any notice to the



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owner of the vehicle. Therefore the appellant/second respondent have failed to prove the contention that the driver of the second respondent/first respondent had no license on the date of accident. The appellant/second respondent ought to have issued notice to the owner of the vehicle second respondent/ first respondent to produce the driving license of the driver and on failure by the second respondent/first respondent the appellant ought to have examined the RDO officials, but in this case the appellant /second respondent has not taken any steps. Mere endorsement made in the MVI report that driving license not produced alone is not sufficient to prove that the driver had no license on the date of accident and it is the duty of the owner to produce all the records. If any failure on the part of the owner, the insurance company has to take steps to prove the same by issuing notice to the owner of the vehicle but they have not done so. Therefore the contention of the appellant that the driver has no license on the date of accident is not acceptable.

12. There is no dispute in respect of quantum of amount. The first respondent/ petitioner has not preferred any appeal as against the quantum of amount. Therefore the tribunal after considering all the aspect correctly awarded fair and just compensation. There is no dispute that the second respondent/first respondent vehicle was



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insured with the appellant/second respondent company on the date of accident and thereby the Tribunal correctly directed the appellant/second respondent to pay the compensation with interest. Therefore as discussed supra this court is of the opinion that the present appeal has no merits and deserves be dismissed.

13. It is represented by the counsels that as per the direction of this Court Rs.65,000/- was deposited and the first respondent/petitioner was permitted to withdraw the amount. Hence the appellant/second respondent is directed to deposit the remaining amount with proportionate interest and costs within two months from the date of this order. On such deposit being made the first respondent/petitioner is permitted to withdraw the same by filing appropriate petition.

14. In the result this Civil Miscellaneous petition is dismissed by confirming the order of the Tribunal. No cost. Consequently connected miscellaneous petition is closed.

13.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1. The Motor Accident Claims Tribunal
Sub Ordinate Judge, Paramakudi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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