



C.M.A(MD)No.1408 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1408 of 2016

and

C.M.P(MD)No.11756 of 2016

The Oriental Insurance Company Limited,
Represented by its Divisional Manager,
Bangur Dharmasalai Building,
III Floor, 6-A, West Veli Street,
Madurai.

... Appellant/2nd Respondent

Vs.

1.Meenatchi

... 1st Respondent/1st Petitioner

2.Sundaralingam

... 2nd Respondent/1st Respondent

*(second respondent remained ex parte
before the lower Court)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.1,39,500/- (Rupees One Lakh Thirty Nine Thousand Five Hundred Only) passed in M.C.O.P.No.497 of 2011, dated 22.03.2016 on the file of the Motor Accident Claims Tribunal cum IV Additional Sub Judge, Madurai.



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For Appellant : Mr.C.Jawahar Ravindran

For R-1 : No appearance

For R-2 : Mr.A.Jayaramachandran

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed by the Motor Accident Claims Tribunal cum IV Additional Sub Judge, Madurai in M.C.O.P.No.497 of 2011, wherein the first respondent has filed a petition for seeking compensation due to the injury sustained in the road accident.

2. The Tribunal has awarded a sum of Rs.1,39,500/- towards compensation. As against the same, the second respondent / Insurance Company has preferred this appeal by disputing the liability.

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



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4. According to the first respondent, when he was proceeding in the road near Echampatti on 07.08.2010 at about 11.00 am, the vehicle bearing Registration No.TN 58 5839 belonging to the first respondent insured with the second respondent came in a rash and negligent manner and dashed against him and thereby, he sustained grievous injury and he sustained permanent disability. Hence, he claimed compensation.

5. The appellant / second respondent had filed counter stating the petition is not maintainable and the petitioner is put to stick proof of the manner of the accident, age, income and occupation of the petitioner. The accident took place due to the negligence on the part of the petitioner, who crossed the road without minding the vehicle passing in the road. Therefore, the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.3 were examined and marked Exhibits P.1 and P.2. On the side of the respondents, R.W.1 and R.W.2 were examined and marked Exhibits R.1 to R.3. Exhibits X.1 to X.3 were also marked.



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7. After hearing both sides and perusing the records, the Tribunal had awarded a sum of Rs.1,39,500/- towards compensation by directing the second respondent to pay the said amount.

8. Aggrieved by the above said order, the second respondent has preferred this Civil Miscellaneous Appeal on the ground of liability, since the driver of the first respondent had no valid license on the date of accident.

9. The learned Counsel appearing for the appellant / second respondent would contend that the accident did not take place due to the negligence on the part of the driver of the second respondent / first respondent and the first respondent / petitioner crossed the road without minding the passing of vehicle in the road and thereby, she invited the accident and moreover, the driver of the second respondent / first respondent had no license on the date of accident and hence, the Insurance Company is noway liable to pay compensation. However, the Tribunal failed to consider the same and awarded the amount of Rs.1,39,500/- by directing the appellant / second respondent to pay the amount. Therefore,



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the order passed by the Tribunal is liable to be set aside.

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10. The learned Counsel appearing for the first respondent / petitioner would contend that the accident took place due to the negligence on the part of the driver of the second respondent / first respondent and FIR also registered as against him and the first respondent / petitioner's side witness also categorically deposed about the manner of the accident. Thereby, the accident took place only due to the negligence on the part of the driver of the second respondent / first respondent. The second respondent / first respondent vehicle was insured with the appellant / second respondent and the driver of the second respondent / first respondent had valid license on the date of accident and the said license was also marked as Exhibits X.2. Thereby, the Tribunal has awarded a fair compensation and fasten the liability as against the appellant / second respondent, since the second respondent / first respondent vehicle was insured with the appellant / second respondent. Therefore, the order passed by the Tribunal is in order and the present Civil Miscellaneous Appeal is liable to be dismissed.



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11. This Court had heard both sides and perused the records, after hearing both sides and perusing the records, the point for determination in this appeal is:

i) Whether the appeal has to be allowed or not?

12. In this case, there is no dispute in respect of the accident and the second respondent / first respondent vehicle was involved in the accident. According to the first respondent / petitioner, the accident took place due to the negligence on the part of the driver of the second respondent / first respondent and FIR also registered as against the driver of the second respondent / first respondent. The first respondent / petitioner was also examined as P.W.1 and he deposed about the negligence on the part of the driver of the second respondent / first respondent. The Tribunal after taking into consideration of the evidences adduced on both sides, fixed the liability as against the driver of the second respondent / first respondent. There is no contra evidence adduced on the side of the appellant / second respondent in respect of the negligence and thereby, the evidences adduced on the first respondent / petitioner are reliable and acceptable in respect of the negligence. Therefore, this Court also held that the accident took place due to the negligence on the part of the driver of the second



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respondent / first respondent.

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13. The main contention of the appellant / second respondent is that the driver of the second respondent / first respondent had no valid license on the date of accident and thereby, the appellant is noway liable to pay compensation. In this context, it is seen from Exhibit X.2, copy of the license of the driver of the second respondent / first respondent and as per the Exhibit X2, the driver of the second respondent / first respondent had license on the date of accident. The Tribunal also in the order specifically observed that "the license of the driver of the first respondent has been produced during the course of examination and the same was marked as witness document No.2 and thereby, the second respondent is liable to pay the compensation". There is no dispute that the second respondent / first respondent vehicle was insured with the appellant / second respondent on the date of accident and the only contention raised by the appellant / second respondent is that the driver of the second respondent / first respondent had no valid license on the date of accident. But before the Tribunal, Exhibit X.2 has marked and it shows that the second respondent / first respondent driver had license to drive the two-wheeler.



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Therefore, the contention of the appellant / second respondent is not acceptable to the regard. Since the second respondent / first respondent vehicle was insured with the appellant / second respondent, he is liable to pay compensation to the first respondent / petitioner. There is no dispute in respect of the quantum of the amount and the appellant as well as the respondents have not disputed the quantum. Therefore, the appeal filed by the Insurance Company on the ground that the second respondent / first respondent driver had no license has no merits and deserves to be dismissed.

14. In the result, this Civil Miscellaneous Appeal stands dismissed. The order passed by the Tribunal in M.C.O.P.No.497 of 2011 on the file of the Motor Accident Claims Tribunal cum IV Additional Sub Judge, Madurai, dated 22.03.2016 is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Motor Accident Claims Tribunal cum
IV Additional Sub Judge,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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