



C.M.A.(MD) No.328 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.328 of 2018

and

C.M.P.(MD) No.4448 of 2018

The Branch Manager,
United India Insurance Company Ltd.,
Jeeva Jothi Building,
Salai Road,
Dindigul - 624 001.

... Appellant

Vs.

1.Ganesh Kumar
S/o.Ashokan

2.ALT.Alagarsamy
S/o.Dharmalingam

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree dated 22.07.2016 made in M.C.O.P.No.1457 of 2008 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Melur-Camp, Madurai.

For Appellant : Mr.M.Sudharsan
for M/s.Vijayakumari Natarajan

For R1 : No appearance



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For R2

: Mr.C.Mayilvahana Rajendran

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Judgment and Decree dated 22.07.2016 passed by the Motor Accident Claims Tribunal (I Additional Sub Court), Melur-Camp, Madurai, in M.C.O.P.No.1457 of 2008.

2. The first respondent/injured claimant had filed a claim petition in M.C.O.P.No.1457 of 2008 before the Tribunal stating that on 27.08.2006 at about 07.10 p.m., while he was riding his motorcycle bearing Registration No.TN-59-Q-9085, a two-wheeler bearing Registration No.TN-57-F-5997 owned by the second respondent and insured with the appellant Insurance Company came in a rash and negligent manner and dashed against the motorcycle of the first respondent, as a result of which he fell down and sustained grievous injuries.

3. The second respondent herein, the owner of the offending vehicle, did not file any counter affidavit before the Tribunal.



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4. The appellant Insurance Company, who was the second respondent before the Tribunal, filed a counter stating that the rider of the insured two-wheeler did not have a valid licence, and therefore, they are not liable to pay the compensation; and that in any case, the accident did not take place due to the negligence of the rider of the insured two-wheeler.

5. Before the Tribunal, the first respondent/claimant has examined himself as P.W.1 and the other witnesses as P.W.2 to P.W.4, including the doctors who treated him and marked Exs.P1 to P17. On the side of the appellant Insurance Company, two witnesses were examined as R.W.1 and R.W.2, and Exs.R1 to R7 were marked.

6. The Tribunal, after taking into consideration the oral and documentary evidence, assessed the functional disability at 30% and awarded a compensation of Rs.4,73,830/- by adopting the multiplier method to the first respondent/claimant. The Tribunal also held that the appellant Insurance Company had not established that the rider of the insured two-wheeler did not have a valid licence and directed the appellant Insurance Company to pay the compensation amount.



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7. The learned counsel for the appellant Insurance Company submitted that the Tribunal has failed to consider that the owner of the insured vehicle did not produce the licence of the rider of the insured vehicle; and that since the burden of proof is on the second respondent owner of the insured vehicle, the Tribunal ought to have held that the rider of the insured vehicle did not possess a valid driving licence and ought to have directed the appellant Insurance Company to pay and recover the compensation amount.

8. The learned counsel for the appellant Insurance Company further submitted that there is no evidence to establish negligence on the part of the rider of the insured vehicle, and the first respondent/claimant has also not established his income of Rs.6,500/- per month adopted by the Tribunal while calculating the compensation.

9. This Court has carefully considered the rival submissions.

10. The questions involved in the instant appeal are as follows:



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- i. Whether the first respondent/claimant has established that the accident took place due to the negligence of the rider of the insured two-wheeler?
- ii. Whether the appellant Insurance Company has established that the rider of the insured vehicle did not have a valid licence?
- iii. Whether the compensation awarded by the Tribunal is just and reasonable?

11. As regards the first question, it is seen that the first respondent/claimant has himself examined as P.W.1 to explain the manner in which the accident took place. The appellant insurance company did not examine any witnesses to establish the manner of the accident. Both the witnesses examined by the appellant Insurance Company did not speak about the accident and only spoke about the policy taken by the owner of the offending vehicle. That apart, Ex.P1-FIR was lodged against the rider of the offending vehicle. Therefore, considering all evidence, the Tribunal found that the first respondent/claimant has established that the accident took place only due to the negligence of the rider of the two-wheeler insured with the appellant. Therefore, this Court finds that the



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first respondent/claimant has established that the accident took place due to the negligence of the rider of the two-wheeler insured with the appellant, and the first respondent/claimant has suffered injuries due to the accident.

12. As regards the second question as to whether the appellant Insurance Company has established that the rider of the insured vehicle did not have a valid licence, this Court finds that Exs.R5 and R6 suggest that the appellant Insurance Company had taken steps to ascertain whether the rider of the insured vehicle, one Elango (since deceased), had a valid licence. From the records and the evidence of R.W.2, it is seen that though a requisition was sent by the appellant Insurance Company to the RTO, Madurai, seeking information about the licence issued to the said Elango (since deceased), the appellant Insurance Company has not sought any information from the RTO, Melur, where the said Elango (since deceased) was residing. That apart, though in the Motor Vehicle Inspector's Report (Ex.P4), there is an entry which suggests that the driving licence of the rider of the insured two-wheeler was not produced, it does not conclusively prove that the said Elango did not have a valid licence. Therefore, this Court is of the view that the appellant Insurance



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Company failed to establish that the rider of the insured two-wheeler Elango did not have a valid licence. Further, the said Elango unfortunately passed away, and therefore, it cannot be said that the owner of the insured vehicle, i.e., the second respondent herein, failed to discharge his burden.

13. As regards the third question on the quantum of compensation, the doctors who treated the first respondent/claimant were examined as P.W.3 and P.W.4. Both doctors have uniformly stated that the first respondent/claimant has lost sight in his right eye and have assessed the disability at 40% and 30%, respectively. Based on their evidence and the Medical Reports, the Tribunal has rightly fixed the functional disability at 30%. The notional income fixed by the Tribunal at Rs.6,500/- per month is just and reasonable.

14. Therefore, this Court finds that the Award of the Tribunal is just and reasonable, and no interference is called for. Accordingly, the Award of the Tribunal is confirmed. This Civil Miscellaneous Appeal is liable to be dismissed.



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15. The appellant Insurance Company is directed to deposit the compensation amount awarded by the Tribunal, together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

16. On such a deposit, the first respondent/claimant is permitted to withdraw the compensation amount together with interest and costs, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

1.The I Additional Sub Judge,
Motor Accident Claims Tribunal,
Melur-Camp, Madurai.



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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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