



C.M.A.(MD)No.987 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.987 of 2018

and

C.M.P(MD)No.10339 of 2018

The Regional Manager,
United India Insurance Co.Ltd.,
South Veethi,
Thanjavur District.

... Appellant

Vs.

1.Marutha Muthu

2.K.Bharat Moorthi

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 24.06.2015 passed in M.A.C.O.P.No.786 of 2013 on the file of the Motor Accidents Claims Tribunal Special Sub Court, Thanjavur.

For Appellant : Mr.A.Shajahan

For R1 : Mr.K.Gokul

For R2 : No Appearance



J U D G M E N T

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The Insurance Company has preferred the instant civil miscellaneous appeal challenging the finding on negligence and the quantum of compensation awarded by the Motor Accidents Claims Tribunal Special Sub Court, Thanjavur in M.A.C.O.P.No.786 of 2013 dated 24.06.2015.

2.The first respondent filed the claim petition stating that on 23.02.2013, at about 11.45 am., while he along with his wife were travelling in a two wheeler, a two wheeler bearing Reg.No.TN-22-c-6631, insured with the appellant-Insurance Company, came in the opposite direction, in a rash and negligent manner and collided with the bike, as a result of which, the first respondent fell down and sustained grievous injuries.

3.The second respondent/owner of the two wheeler remained ex-parte.

4.The appellant/Insurance Company filed a counter stating that the accident did not take place due to the negligence of rider of the insured two wheeler and that the claimant did not have any valid licence and that in any case, the compensation claimed was excessive.



5.Before the Tribunal, the first respondent examined two witnesses and marked Exs.P1 to P7. The appellant/Insurance Company examined R.W.1 and marked Exs.R1 to R5.

6.The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent riding of the insured vehicle and directed the appellant/Insurance Company to pay compensation of Rs.2,66,000/- to the first respondent.

7.The learned counsel for the appellant/Insurance Company submitted that though they have challenged the finding of negligence, the appellant would not be able to assail the said finding as the appellant had not produced any evidence to substantiate their case; that however, the rider of the insured two wheeler did not have licence and hence, the Tribunal ought to have permitted the appellant to pay and recover the compensation from the owner, namely, the second respondent and that in any case the compensation awarded by the Tribunal was excessive.

8.Per contra, the learned counsel for the first respondent submitted that the award passed by the Tribunal is just and reasonable and there is no reason to interfere with the award.



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9.The second respondent who remained ex-parte before the Tribunal has not chosen to enter appearance, even before this Court inspite of service of notice.

10.This Court has given its consideration to the rival submissions made on either side and perused the evidence on record.

11.The questions which are involved in the instant appeal are as follows:-

a.Whether the Tribunal had awarded just and reasonable compensation?

b.Whether the Tribunal ought to have directed the appellant to pay and recover the compensation?

12.As regards the first question, it is seen that the first respondent had marked the medical records, namely, discharge summary/Ex.P.3, disability certificate/Ex.P.6 and X-Ray/Ex.P.7 to show that he had suffered 67% disability. The appellant was unable to point out any infirmity in the said medical records. Hence, the award of the Tribunal in granting Rs.3,000/- for each percentage of the disability need not be



interfered with. The award of compensation under the other heads is also just and reasonable and no interference is called for. Therefore, this Court is of the view that the compensation of Rs.2,66,000/- awarded by the Tribunal is just and reasonable.

13.As regards the second question, it is seen that the second respondent remained ex-parte before the Tribunal. The appellant examined R.W.1 to show that the rider of the insured two wheeler had pleaded guilty before the criminal Court to the charge of riding the two wheeler without any valid licence. The appellant has also marked Ex.R.3, receipt issued by the criminal Court for the payment of the fine by the rider. The appellant has also marked Ex.R.4, a letter sent by the appellant's counsel calling upon the second respondent to produce the copy of the licence.

14.In the light of the evidence, this Court is of the view that the appellant has established that the rider of the insured two wheeler had ridden the two wheeler, without any valid licence. In the facts and circumstances, it would be just and fair to permit the appellant to pay the compensation and recover the same from the second respondent, in accordance with law. The second question is answered, accordingly.



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15.The appellant is directed to deposit the compensation of Rs. 2,66,000/- with accrued interest, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

16.On such deposit, the first respondent is entitled to withdraw the aforesaid amount together with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

17.In the result, this Civil Miscellaneous Appeal is partly-allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
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To

Motor Accidents Claims Tribunal Special Sub Court,
Thanjavur.



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SUNDER MOHAN, J.

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