



CMA.(MD)No.788 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 788 of 2023

and

CMP (MD) No. 10947 of 2023

The Branch Manager,
M/s.United India Insurance Co. Ltd.,
P.B.No.110, Javans Bhavan,
Opp. To Head Post Office,
Sivakasi,
Virudhunagar District. : Appellant/2nd Respondent

Vs.

1.Lakshmipriya : 1st Respondent/Petitioner
2.R.Vinoth
3.G.Rajendran
4.R.Lakshmi
5.R.Gopikannan
6.R.Devi
7.R.Shanmugamathi : Respondents 2 to 7/
Respondents 1 to 7

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Tribunal of MACT-cum-Subordinate Court, Sivakasi, made in MCOP No.62 of 2011, dated 21/10/2021.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.G.Ravi Shankar

For R2 to R7 : No appearance



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JUDGMNT

WEB COPY This Appeal is filed seeking to set aside the order of the Tribunal of MACT-cum-Subordinate Court, Sivakasi, made in MCOP No.62 of 2011, dated 21/10/2021.

2.The facts in brief:-

On 23/11/2010 at about 06.00 pm, the petitioner was walking along with his mother from west to east direction. On the way in the place of occurrence, the third respondent riding his two wheeler bearing registration No.TN-67-AY-9806 from the same direction in a rash and negligent manner and dashed the petitioner. She sustained grievous injuries, admitted in the Graham Hospital, Sivakasi as inpatient.

3.Over the occurrence, a case in Crime No.310 of 2010 was registered by the Vembakottai Police Station for the offences under sections 279 and 377 of IPC. The first respondent is the owner of the two wheeler, insured with the second respondent. Seeking compensation amount, the claim petition was filed.

4.That was resisted by the Insurance Company stating that the rider of the two wheeler namely the 3rd respondent was not having effective driving licence.



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There was a delay on the part of the complainant in lodging the complaint, since it was filed only after a delay of seven days. The occurrence took place because of the rash and negligent driving of the rider of the two wheeler and the petitioner suddenly crossed the road and invited the occurrence. Apart from that, customary denies were also taken.

5.Before the Tribunal, on the side of the claimant, 2 witnesses were examined and 9 documents marked, apart from that, MO1 was marked. The medical disability certificate was marked as Ex.C1. On the side of Insurance Company, 4 witnesses were examined and 2 documents marked and Exs.X1 to X3 were also marked.

6.At the conclusion of the enquiry, the Tribunal found that the occurrence took place because of the rash and negligent driving of the 3rd respondent, the rider of the two wheeler. So it fastened the liability upon the first respondent and directed the Insurance Company to pay the compensation. Regarding the compensation, considering the disability suffered by the claimant, it fixed a sum of Rs.2,21,797/-.



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7. Aggrieved over the same, this appeal is preferred by the appellant on the sole ground that the 3rd respondent was not having effective driving licence to drive the two wheeler on the date of occurrence. So, the Insurance Company must be absolved its liability and the compensation must be paid only by the insured.

8. Regarding the quantum, no dispute is raised by the appellant. So that portion of the order is confirmed.

9. Similarly, on the point of negligence also, no point was raised by the appellant. So on that account, the finding recorded by the Tribunal fixing the negligence on the 3rd respondent is also confirmed.

10. Regarding the driving licence, the learned counsel appearing for the appellant would be referring to the finding of facts recorded by the Tribunal.

11. The 3rd respondent namely the rider of the vehicle at the time of occurrence, was not examined. The wife was examined as RW2. She was not able to trace out the driving licence of her husband.



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12.RW3 has stated that at the time of inspection, the 3rd respondent did not produce the driving licence before the Motor Vehicles Inspector. The report is marked as Ex.P2. Due to that, the vehicle was seized and handed over to the police station, When the 3rd respondent namely the rider of the vehicle was a party to the proceedings, since he died on the spot, his legal heirs were impleaded. The wife of Rajendran was examined as RW2. Had it been so that Rajendran was having effective driving licence, that would have been produced or at least would have informed the Insurance Company. The document marked on the side of the claimant as Ex.P9 did not bear the date of birth of Rajendran. Whether it is pertaining to Rajendran or not, could not be traced out by the Tribunal. In those factual circumstances, the Tribunal ought to have come to the conclusion that the 3rd respondent was not having any effective licence. When the parties failed to prove same, adverse inference has to be drawn. So, the contrary finding recorded by the Tribunal is not correct on record. So, fixing the liability upon the Insurance Company to pay the compensation may not be proper. But any violation of either Motor Vehicles Act or breach of condition of insurance, the third party right should not be affected.



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The right of the third party must be protected by way of modifying the award.

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13.In the result, this Civil Miscellaneous Appeal is **partly allowed**, the award is modified to the effect that the appellant is directed to deposit the entire award amount within a period of two months from the date of receipt of a copy of this order. After being made, the appellant is permitted to recover the amount from the insured. On deposit, the claimant may withdraw the proportionate amount as ordered by the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

30/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
the Sub Court, Sivakasi.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

er

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