



C.M.A.No.527 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.527 of 2023

Rajasekar

... Appellant

VS.

1.A.Sekar

2.Bajaj Allianz General Insurance Co. Ltd.,
184/25, KPS Shopping Arcade,
Madurai 625010

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow the CMA and enhance the award passed by the Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Perambalur by its decree and judgment dated 28.04.2022 and made in M.C.O.P.No.456 of 2017.

For Appellant : Mr.C.Vidhusan

For R2 : Mr.J.Michael Visuvasam
for M/s.R.V.Sivaraj

For R1 : No Appearance



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J U D G M E N T

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Aggrieved by the award passed by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Perambalur fixing compensation at Rs.1,02,513/-, the injured/claimant has come before this Court.

2. It is the case of the appellant/claimant that on 02.02.2017, he was driving the auto belonging to the 1st respondent insured with the 2nd respondent in Perambalur to Thuraiyur Road. When he approached the Swamy Theatre, a motorcyclist came from the opposite direction in a rash and negligent manner and dashed against the auto owned by the 1st respondent. According to the claimant, the accident had occurred only due to the rash and negligent driving of the motorcyclist. As a result of which, the claimant received multiple grievous injuries all over the body. Particularly, fracture of right shoulder and right knee. Claiming Rs.10,00,000/- as compensation for the injuries suffered by him, a claim petition was filed against the owner of the auto and its insurer. The owner-driver and insured of the offending two wheeler have not been impleaded.



3. The 1st respondent remained *exparte* before the Tribunal and the 2nd

respondent-Insurance Company filed counter and resisted the claim on the ground that negligence was on the part of the driver of the two wheeler and therefore, the claim petition should have been filed against the owner of the said vehicle. It was also claimed by the 2nd respondent/Insurance Company that claimant himself was a tortfeasor and hence, he could not be treated as a third party. It was also claimed by the 2nd respondent/Insurance Company that the claimant did not possess valid driving licence on the date of accident.

4. Before the Tribunal, the claim petition was taken up for enquiry along with claim petition filed by the rider of the two wheeler and the rider of the two wheeler was examined as PW.1. The claimant was examined as PW.2. On behalf of the claimants, 14 documents were marked as Exs.P1 to P14. On behalf of the 2nd respondent/Insurance Company, an Official of the RTO Office, Perambalur was examined as RW.1 and an Official of 2nd respondent/Insurance Company was examined as RW.2. On behalf of the 2nd respondent/Insurance Company, 6 documents were marked as Exs.R1 to R6. The Disability Certificate issued to the claimant was marked as Ex.C2 and



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the disability certificate issued to the rider of two wheeler is marked as

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5. The Tribunal based on the evidence available on record came to the conclusion that accident had occurred only due to the rash and negligent driving of the 1st respondent's auto by the claimant. The said finding was arrived at by the Tribunal based on the FIR registered against the claimant and the same was marked as Ex.P1. The Tribunal also found that the claimant was working as auto driver under the 1st respondent at the time of accident. Therefore, he sustained injuries during the course of his employment.

6. The claimant, who was examined as PW.2 clearly admitted that he had not produced driving licence at the time of Motor Vehicle Inspection. He also failed to produce the driving licence before the Tribunal. Therefore, the Tribunal held that the claimant, who was driver of the auto did not possess valid driving licence at the time of accident and hence, there was violation of policy conditions. Accordingly, the Tribunal exonerated the Insurance Company from paying the amount and fastened entire liability on



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the owner of the vehicle namely the 1st respondent. The amount payable to the claimant was quantified at Rs.1,02,513/-. Aggrieved by the same, the claimant has come before this Court.

7. The learned counsel appearing for the appellant/claimant submitted that though there was violation of policy conditions, the Tribunal should have applied the concept of pay and recovery and should have directed the 2nd respondent/Insurance Company to pay the amount and recover the same from owner of the vehicle namely the 1st respondent. The learned counsel further submitted that the amount awarded by the Tribunal is very much on lower side.

8. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the 1st respondent/owner of the vehicle failed to verify whether his driver namely the appellant/claimant possessed valid driving licence or not and therefore, there is a gross negligence on his part in allowing an incompetent person to drive the vehicle and consequently, there is a fundamental violation of policy conditions. He further submitted that the claimant is not a third party, he is only the employee of the 1st



respondent/insured/owner of the vehicle and the Tribunal awarded compensation only by applying provisions of Workmen's Compensation Act, 1923. He further submitted that the Tribunal under Motor Vehicles Act, 1988, should not have applied the provisions of Workmen's Compensation Act, 1923 and passed award under the provisions of said Act. In support of his contention, the learned counsel relied on the following judgments of this Court:-

- (i) *New India Assurance Co. Ltd. vs. P.Suresh and another* reported in **2021 ACJ 2418**.
- (ii) *Beli Ram vs. Rajinder Kumar and another* reported in **2020 ACJ 3000**.
- (iii) *M.Anbalagan vs. K.M.Asalm Basha and another* reported in **CDJ 2015 MHC 6350**.

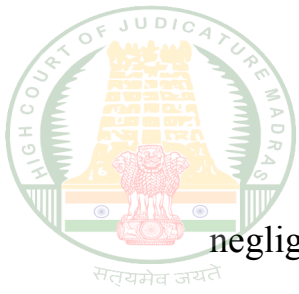
9. Though the appellant/claimant in his averment in the claim petition had stated that accident had occurred due to the negligence on the part of the driver of the two wheeler, there is no independent evidence except his interested testimony to support his claim. The other witness namely driver of the two wheeler, who was examined as PW.1 deposed that the negligence



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was on the part of the claimant/driver of the auto. The Tribunal based on the contents of FIR, which was registered against the claimant came to the conclusion that the accident had occurred due to the negligence on the part of the claimant. The Tribunal proceeded to award compensation by applying the provisions of Workmen's Compensation Act, 1923 on the ground that claimant was employee of 1st respondent as driver at the time of accident. In the absence of any independent evidence to support the plea of claimant, I do not find there is any error on the part of the Tribunal in fixing negligence on the appellant/claimant.

10. Though the claimant in his evidence before the Tribunal had stated that he possessed valid driving licence at the time of accident, he failed to produce the same before the Tribunal. The Motor Vehicle Inspector in his report marked as Ex.R4 clearly mentioned that driving licence of the claimant was not produced. Therefore, the Tribunal was justified in arriving at a conclusion that the claimant did not possess valid driving licence at the time of accident. The 1st respondent-owner of the vehicle/insured has duty to verify whether his employee namely the claimant possessed valid driving licence before permitting him to drive the vehicle. Therefore, there is a



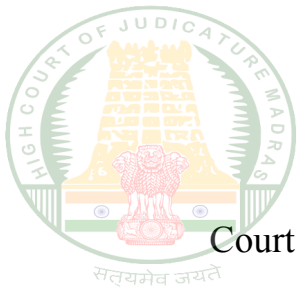
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negligence on the part of the 1st respondent/owner of the vehicle also.

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11. The claimant knowing fully well, he is not possessing valid driving licence got himself appointed as a driver under the 1st respondent and plied the auto without driving licence. Therefore, there is negligence on the part of the claimant also. It is pertinent to note that the claimant herein is not a third party seeking compensation based on negligence on the part of driver of the vehicle. In the case on hand, the claimant himself is a tortfeasor and he is not a third party to the vehicle. He is employed under the owner of the vehicle.

12. In such circumstances, the benefit of Section 149(1) of the Motor Vehicles Act, 1988, will not enure to the claimant. Exactly, in a similar situation in *Beli Ram vs. Rajinder Kumar and another* reported in **2020 ACJ 3000**, the Apex Court held that the owner of the vehicle has to bear the responsibility for the consequences of permitting a driver to drive the vehicle without proper licence. In the facts of the said case, in a claim under Workmen's Compensation Act the employer was directed to bear the entire burden of payment exonerating the insurer. The order passed by the High



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Court exonerating the insurer was affirmed by the Apex Court pointing out negligence on the part of the employer in not verifying the licence. The ratio laid down in that case squarely applicable to the facts of the present case. Hence, I do not finding anything to interfere with the award passed by the Tribunal by directing the owner of the vehicle, who failed to be diligent in verifying the driving licence of his employee to pay the entire amount.

13. The Apex Court in ***Beli Ram*** case made it clear that ratio in that case will not be applicable to a claim by a third party under the provisions of Motor Vehicles Act, 1988. Here though claim petition was filed before the Motor Accident Claims Tribunal, the award was passed by applying the provisions of Workmen's Compensation Act, 1923 treating the claimant as employee of the 1st respondent-owner. The said finding has not been challenged by the 1st respondent-owner of the vehicle. Therefore, this Court is not inclined to disturb the same and hence, the ratio in ***Beli Ram*** case will govern the present case.

14. As far as quantum of compensation is concerned, it was argued by the learned counsel appearing for the appellant/claimant that amount of



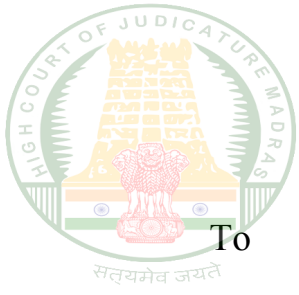
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Rs.8,000/- fixed by the Tribunal as income per month is very much on lower side. It is pertinent to mention that the Tribunal calculated Rs.8,000/- per month based on the minimum wages payable to the driver at the time of accident. Since the compensation amount is not calculated based on the tortfeasor's liability under Motor Vehicles Act, 1988, the liberal yardstick applicable to fixation of compensation under Motor Vehicles Act, 1988 cannot be pressed into service in this case and the Tribunal rightly fixed income of the claimant under minimum wages payable to him at the time of accident and applied the formula as per the Employee's Compensation Act, 1923 and arrived at the quantum of compensation at Rs.1,02,513/-. The same is reasonable and in accordance with law. Hence, I do not find anything to interfere with the award passed by the Tribunal.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

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Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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To

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1.The Motor Accidents Claims Tribunal /
Chief Judicial Magistrate, Perambalur.

2.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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