

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.601 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
M/s.United India Insurance
Company Limited,
Mayiladudurai.

....Appellant/2nd Respondent

Vs.

1.Durairaj
2.Girivasan.C

....Respondents/Petitioner/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.27 of 2012, dated 19.02.2013, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Mayiladudurai at Nagapattinam District.

For Appellant :M/s.J.Chandran

J U D G M E N T

On 24.05.2011 at about 09.45 a.m., when the claimant was riding his motorcycle on the Dharmakulam road, the Tractor bearing registration No.TN-51T-0360, coming in the opposite direction and driven in a rash and negligent manner dashed against him. As a result, he had sustained multiple bone fracture injuries. Hence, a claim petition had been levelled against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The respondent denied the occurrence of the accident that the driver of the tractor had committed it. The claimant had driven his two wheeler in a negligent manner and dashed it against the tractor. Further, the driver of the tractor did not possess valid driving licence. The averments regarding age, income, nature of injuries and mode of treatment was denied.

3. After recording the averments of bothsides, the Tribunal had framed three issues. On the side of the claimant, two witnesses were examined and thirteen documents were marked. On the side of the respondents, two witnesses were examined and two documents were marked. After recording evidence of the witnesses and on perusing the exhibits marked by both parties, the Tribunal granted a sum of Rs.2,14,260/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal.

4. The highly competent counsel Mr.J.Chandran, appearing for the appellant submits that in the said accident, two vehicles had been involved. As such contributory negligence has to be fastened. But the claimant's vehicle and its Insurance Company have not been impleaded as necessary parties. The very competent counsel further submits that the driver of the tractor did not possess valid driving licence at the time of accident. Hence, the learned counsel entreats the Court to set aside the award.

5. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel Mr.J.Chandran and on perusing the typed set of papers, this Court is of the view that the claimant had sustained multiple bone fracture injuries and he had undergone surgical operation on his leg, wherein a steel plate was fixed in the operated area. The Doctor had assessed the disability at 41%. The medical expenses amounts to a sum of Rs.1,39,860/-. As such the quantum of compensation is not on the higher side. Further, at the time of accident, the driver of the offending vehicle did not possess valid driving licence. Therefore, this Court directs the Insurance Company to deposit the entire compensation amount with interest, as per the trial Court's findings, within a period of six weeks from the date of receipt of this order. The Insurance Company is permitted to recover the said amount from the owner of the vehicle in the same proceedings. Hence, the above appeal is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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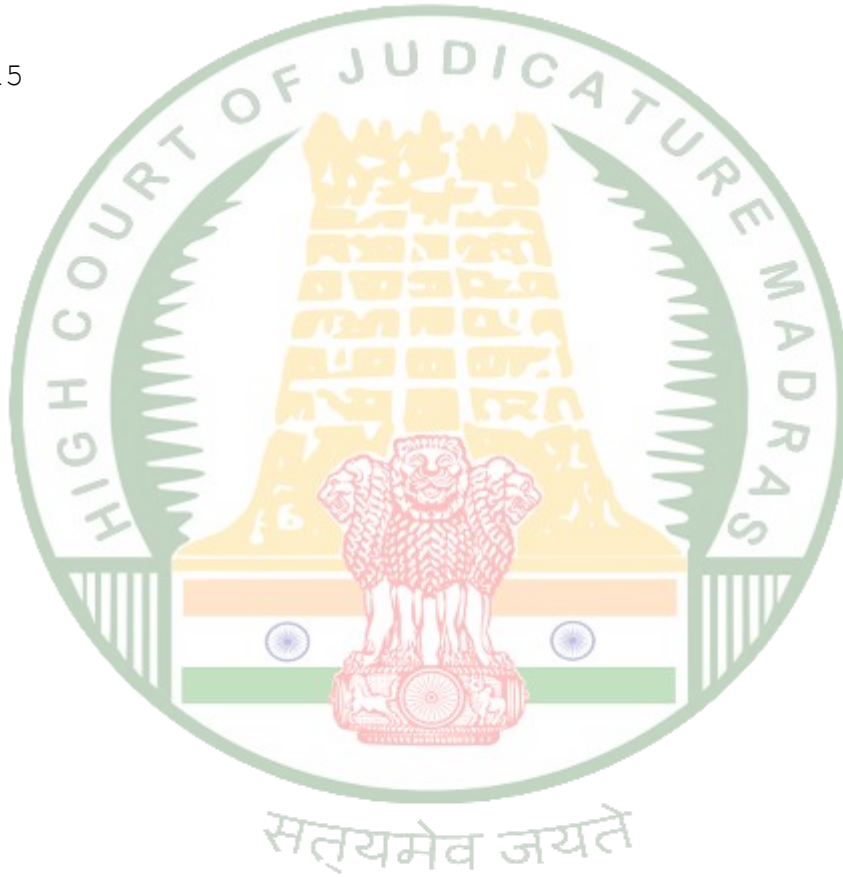
To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Mayiladudurai at Nagapattinam District.

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

C.M.A.No.601 of 2015

SKV(CO)
Eu 28.10.15



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