**In the High Court of Judicature at Madras**

**Dated: 20.01.2016**

**Coram**

**The Honourable Mr. Justice T.RAJA**

**C.M.A.No.3301 of 2014**
**and M.P.No.1 of 2014**

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai-13.

Now at:

United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
Silingi Building, IV Floor,
No.134, Greams Road,
Chennai-600 006. ... Appellant

..vs..

1.A.S.Ravi
(rep. by his wife Prema as Natural
Guardian impleaded as per order in
M.P.No.6359/2011 dated 16.03.2012)

2.Western Agencies (Madras) Pvt. Ltd.,
No.87, Redhills Road,
Vinayagapuram, Kolathur,
Chennai-600 099. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2013 made in M.A.C.T.O.P.No.1600 of 2007 on the file of the learned VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

| | | |
|---|---|---|
| For Appellant | : | Mr.P.Sankaranarayanan |
| For Respondent-1 | : | Mr.A.N.Viswanatha Rao |
| For Respondent-2 | : | No Appearance |

## JUDGMENT

The present Civil Miscellaneous Appeal has been directed against the judgment dated 22.04.2013 made in M.A.C.T.O.P.No.1600 of 2007 on the file of the learned VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, in and by which, the learned Tribunal has awarded a total compensation of Rs.9,40,280/- which is rounded off to Rs.9,40,000/- as against the claim of Rs.15,00,000/- for the multiple injuries and fractures suffered by the claimant/first respondent.

2.Heard the learned counsel appearing for the parties and also perused the materials available on record.

3.After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.9,40,000/- as compensation payable to the claimant with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Insurance Company has filed the present appeal.

4.The learned counsel for the appellant/Insurance Company assailed the impugned award on three grounds. Firstly, when the clear and categorical finding of the Tribunal holding that the driver of the insured vehicle failed to possess valid driving license, which amounts to violation of policy condition, while fastening the liability on the Insurance Company for payment of entire compensation, as per the principle laid down in the case of **Oriental Insurance Co. Ltd., Vs. Shri Nanjappan and others [2004 (2) CTC 464],** pay and recovery ought to have been applied, for the purpose of enabling the appellant/Insurance Company to pay the compensation to the claimant first and then recover the same from the owner of the vehicle. Secondly, it is also the admitted case that when the doctors, belonging to the Department of Rehabilitation of the Disabled, Government Peripheral Hospital, K.K. Nagar, Chennai after analysing the various injuries and fractures suffered by the claimant, had assessed 50% disability and indeed, the disability certificate issued by the said department, marked as Ex.P15, which clearly shows that the claimant had suffered only 50% disability and such a reputed Government Organisation had issued National Identity Card and Pass Book with disability certificate after analysing the health condition of the claimant, without any rebuttal evidence, the Tribunal ought not to have taken on its own and assessed the disability at 60%. Adding further, he would submit that when two doctors namely, Dr.K.J.Mathiazhagan and Dr.J.R.R.Thiagarajan/P.W.2 & P.W.3 have independently assessed the disability of the claimant at 40% and 50% respectively, it is not open to the Tribunal to reach an unilateral conclusion to hold that the claimant has suffered 60% disability. Finally, the learned counsel for the appellant would submit that the Tribunal had committed an error in fixing the huge amount of Rs.30,000/- towards future medical expenses and therefore, he pleaded that the award passed by the Tribunal warrants interference.

5.The learned counsel for the first respondent/claimant fairly agrees to the contention of the learned counsel for the appellant/Insurance Company in regard to percentage of disability fixed by the Tribunal and amount awarded towards future medical expenses.

6.Considering the submission made by the learned counsel for the appellant in regard to disability, as per the disability certificate issued by the Department of Rehabilitation of the Disabled, Government Peripheral Hospital, K.K. Nagar, Chennai, the disability fixed by the Tribunal at 60% is restricted to 50%, therefore, the loss of earning power works out to Rs.3,60,000/- (Rs.4000/- x 12 x 15 x 50/100). Also, the amount of Rs.30,000/- awarded by the Tribunal towards future medical expenses is also on the higher side and the same cannot be more than Rs.10,000/-, for which the learned counsel appearing for the claimant fairly agreed to the aforesaid submission and submitted that the future medical expenses can be reassessed to Rs.12,000/- and she also agreed to the contention of the learned counsel for the appellant in regard to loss of earning power. The learned counsel for the claimant would submit that if even 50% disability is taken for the injuries suffered by the claimant in the accident occurred due to the rash and negligent driving of the driver of the offending vehicle, it has to be redetermined at Rs.3,60,000/- for the simple reason that the driver of the vehicle at the time of accident was not holding any valid license. The learned counsel for the claimant had given the memo of calculation which has been accepted by the learned counsel for the appellant/Insurance Company. On the basis of the said calculation, this Court is inclined to modify the amount awarded by the Tribunal as follows:

| ***Heads*** | ***Amount*** |
|---|---|
| Loss of Earning Power (Rs.4000x12x15x50/100) | Rs.3,60,000 |
| Transportation | Rs. 5,000 |
| Extra Nourishment | Rs. 5,000 |
| Damages to Clothes | Rs. 1,000 |
| Medical Expenses | Rs.3,67,280 |
| Attendant Charges | Rs. 5,000 |
| Loss of Amenities | Rs. 25,000 |
| Pain & Suffering | Rs. 50,000 |
| Future Medical Expenses | Rs. 12,000 |
| Total | Rs.8,50,280 |

Accordingly, the total compensation has been redetermined to Rs.8,50,280/- which is rounded off to Rs.8,50,000/- as against Rs.9,40,000/- awarded by the Tribunal.

7.Agreeing with the contentions made by the learned counsel for the appellant/Insurance Company as the driver of the offending vehicle had driven the vehicle without any valid driving license on the date of accident, this court fastening the liability on the Insurance Company to pay the compensation as stated supra to the claimant first and then recover the same from the owner of the vehicle, hereby applies the rule of pay and recovery as it is a fit case for pay and recovery. Accordingly, the rule of pay and recovery is ordered.

8.In the result, the Civil Miscellaneous Appeal is disposed of accordingly. Since the entire amount has been deposited by the Insurance company, the Insurance Company is permitted to withdraw the balance amount with proportionate interest. The claimant is permitted to withdraw a sum of Rs.8,50,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. It is made clear that liberty is given to the appellant-Insurance Company to initiate recovery proceedings against the second respondent, by filing appropriate petition, in accordance with law. No costs.

Consequently, connected M.P. is closed.

20.01.2016

Index: Yes/No.
Internet: Yes/No.
DP

To

1.The VI Judge,
(MACT) Small Causes Court,
Chennai.

2.The Record Keeper,
V.R. Section, High Court, Madras.

**T.RAJA.J,**

DP

**C.M.A.No.3302 of 2014**

**20.01.2016**