

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1080 of 2010

United India Insurance Co.Ltd.,
Branch Office No.III
No.137-D, Cherry Road
Salem-1

Appellant/2nd respondent

-Vs-

1. Ramasamy
S/o Perumal Padayachi ... 1st respondent/Petitioner
2. V.Verandra Prabhu ... 2nd Respondent/1st Respondent.

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.7.2009 made in M.C.O.P.No.894 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.I, Salem.

For Appellant :: Mr.M.J.Vijayaraaghavan

For Respondents :: Mr.L.Chandrakumar for R1
No appearance for R2

JUDGMENT

M/s United India Insurance Company Limited, aggrieved over the impugned award passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.I, Salem in M.C.O.P.No.894 of 2005 dated 30.7.2009 only in respect of fastening of the liability on the insurance company, has filed this civil miscellaneous appeal.

2. Learned counsel for the appellant submitted that when the Insurance company had discharged their burden to prove that there has been a wilful breach of policy conditions by the owner of the Moped in allowing his driver to drive the offending vehicle without a valid and effective licence and the consequent failure on the part of the owner to produce the driving licence, based on Ex.R3-claim form, the Tribunal ought not to have fastened the liability on the insurance company. In any event, the learned counsel submitted that the Tribunal ought to have given liberty to the appellant to pay and recover the compensation amount from the owner of the vehicle.

3. For the injuries sustained by the first respondent claimant in a road accident on 2.5.2005 caused by the driver of the second respondent's motor-cycle bearing Registration No.TN 27 J 2017, the Tribunal has awarded a compensation of Rs.1,26,100/- along with 7.5% per annum from the date of filing of the petition till the date of realization of the said amount to the first respondent claimant to be paid individually or jointly by the appellant and the second respondent herein, on the ground that the appellant insurance company failed to prove that the driver of the motorcycle did not possess a valid driving licence. In fact the Tribunal, considering the wound certificate Ex.P2 as well as the discharge summaries Ex.P3 & P4 issued by the Karan and Vasantham Hospitals, awarded a sum of Rs.15,000/- at the rate of Rs.5,000/- for three wounds suffered by the claimant. After taking into account the disability certificate Ex.P8 and X-ray Ex.P9 issued by the doctor PW2 assessing the disability at 40%, the Tribunal accepted the same and awarded a sum of Rs.40,000/- towards permanent disability on the ground that the left leg of the claimant has been reduced by 1 ½ inches and that he could not move and walk freely or pedal the bicycle or could not lift any heavy objects and that he could not lead a normal life. It also awarded a sum of Rs.8,500/- towards transportation charges, Rs.32,700/- towards medical expenses and Rs.30,000/- for pain and suffering.

4. Considering the evidence adduced by the parties and the specific finding of the Tribunal that the appellant insurance company failed to prove that the driver of the motorcycle did not possess a valid driving licence on the facts of this case, while rejecting the contention of the learned counsel for the appellant to grant liberty to pay and recover, this Court is not inclined to interfere with the impugned award on the quantum of compensation awarded to the first respondent claimant and the liability of the appellant to pay the compensation amount. Accordingly, the civil miscellaneous appeal is dismissed without any modification in the award of the Tribunal so far as the quantum of compensation is concerned. Learned counsel for the appellant fairly submitted that the entire amount has been deposited before the Tribunal on 11.6.2010. It is open to the first respondent claimant to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal. Consequently, interim order stands vacated and the M.P.No.1 of 2010 is also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

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To

1. The Motor Accidents Claims Tribunal
Additional District Judge
Fast Track Court No.I
Salem

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

+1 cc to Mr.M.J.Vijayaraghavan, Advocate, sr.63404
+1 cc to Mr.L.Chandrakumar, Advocate, sr.63160

C.M.A.No.1080 of 2010

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