

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3688 of 2010

M/s Royal Sundaram Alliance
Insurance Company Limited
No.46, Whites Road
Chennai 600 014

...Appellant/2nd Respondent

-Vs-

1. T.Karthik Raja @ Rajan

2. M.Rajinikanth

(R2 set ex parte before Tribunal)... Respondents/Petitioner/
1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree dated 7.9.2010 made in M.C.O.P.No.132 of 2006 on the
file of the Motor Accidents Claims Tribunal, Chief Judicial
Magistrate, Cuddalore.

For Appellant :: Ms.Sreevidhya

For Respondents :: Mr.N.Suresh for R1

JUDGMENT

This appeal is directed against the impugned judgment and
decree passed by the Motor Accidents Claims Tribunal (Chief
Judicial Magistrate), Cuddalore in M.C.O.P.No.132 of 2006 dated
7.9.2010, awarding a sum of Rs.1,39,000/- together with interest
and costs payable by the appellant-Insurance company and
recoverable from the second respondent, owner of the motor-cycle.

2. Heard the learned counsel for the appellant/insurance
company and the learned counsel for the first
respondent/claimant.

3. Learned counsel for the appellant submitted that when the
Tribunal has rendered a clear finding that the rider of the
motor-cycle involved in the accident was not having a valid
driving licence, it ought to have exonerated the appellant from
the liability to pay compensation to the first
respondent/claimant and ought not to have applied the principle
of 'pay and recover' on the facts of the case.

4. On the other hand, the learned counsel for the first respondent/claimant submitted that when once the Tribunal has rightly come to the conclusion that the appellant shall be liable to pay the compensation to the first respondent/claimant and the same would be recoverable from the second respondent, the owner of the motor-cycle, the appellant cannot have any grievance and hence the impugned judgment does not call for any interference.

5. This Court is not able to find any merits in the appeal. The Tribunal, on consideration of the evidence, has held that the first respondent/claimant suffered multiple injuries including fractures all over the body apart from his thumb being amputated leaving a small portion by fixing the percentage of disability at 45% based on Exs.P3 and P7 and taking into account the age of the injured as below 30 years at the time of accident, awarded a sum of Rs.90,000/- for 45% disability at the rate of Rs.2,000/- for each percentage of disability. The Tribunal also awarded a sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- for extra nourishment, Rs.3,000/- towards transportation expenses and Rs.5,000/- towards medical expenses. The Tribunal also awarded a sum of Rs.6,000/- towards loss of income for six weeks, fixing the monthly income of the claimant at Rs.4,000/- per month, and a sum of Rs.20,000/- towards loss of appearance due to the amputation of a portion of thumb, thus awarding a just and reasonable compensation of 1,39,000/- with interest at 7.5% per annum and costs with liberty to the appellant to recover the same from the second respondent, on the ground that the appellant has succeeded in proving that the driver of the second respondent's motor-cycle had no driving licence at the time of the accident. Hence this Court does not find any infirmity with the impugned judgment and decree, since the Tribunal has not only applied the principle of 'pay and recover', but also has properly enunciated the mode of recovery to be followed by the appellant-Insurance company. (See Oriental Insurance Co.Ltd., v. Shri.Nanjappan and others, 2004 (2) CTC 464 and Oriental Insurance Co.Ltd., v. Baljit Kaur and others, 2004 (1) CTC 210). This apart, since the award amount also is meagre, this Court is not inclined to interfere with the impugned judgment. Accordingly, the civil miscellaneous appeal is dismissed confirming the judgment and decree of the Tribunal. Since the appellant had already deposited the entire award amount before the Tribunal, the first respondent/claimant is permitted to withdraw the entire award amount along with accrued interest by moving appropriate application before the Tribunal. Consequently, the interim order stands vacated and the M.P.No.1 of 2010 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

To

The Motor Accidents Claims Tribunal
Chief Judicial Magistrate
Cuddalore

+ 1 cc to M/s. N. Suresh, Advocate SR.61838
+ 1 cc to M/s. R. Sree Vidhya, Advocate SR.61865

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