

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.238 of 2003 and
C.M.P.Nos.1691 & 9749 of 2003

M/s.National Insurance Co.
Ltd., Maruthi Complex,
Omalur Main Road,
Salem 4

....Appellant /2nd Respondent

vs.

1.Mark PrasadIst Respondent/Petitioner
2.Abdul Khalam2nd Respondent/Ist Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 19.10.2001 made in M.C.O.P.No.349/1997 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Namakkal.

For Appellant : Mrs.R.Srividhya
For R.1 : Mr.R.Saseetharan

JUDGMENT

This appeal has been preferred by the Insurance Company aggrieved by the award of Rs.1,75,000/- as compensation for the injuries sustained by the first respondent in an accident occurred on 09.01.1996.

2.Heard Mrs.R.Srividhya, learned counsel appearing for the appellant/Insurance Company and Mr.R.Saseetharan, learned counsel appearing for the first respondent/claimant.

3.The only question to be decided in this appeal is with regard to fastening of liability. According to the learned counsel for the appellant, though it was proved before the Tribunal that the second respondent, rider of the two wheeler did not possess a valid driving licence, still, the Tribunal fastened the liability on the appellant/Insurance company directing them to pay the compensation amount. In fact, for non possession of valid driving licence, the tribunal ought to have ordered pay and recovery.

4.As far as quantum of compensation is concerned , the tribunal awarded a sum of Rs..1,62,000/- [3000 x 12 x 18 x 25/100) for 25%

disability by taking into consideration Rs.3,000/- as the monthly income and adopting appropriate multiplier 18, which is not questioned by the appellant. Further, the first respondent has restricted his claim to Rs.1,75,000/-. Accordingly, the Tribunal has awarded a sum of Rs.1,75,000/- as compensation to the first respondent/claimant. In any event, considering the fact that the first respondent is the driver of the Lorry and he has suffered fracture of tibia fibula in the right leg and surgery was conducted, it is impossible for him to act as a driver as usual and therefore, the Tribunal rightly applied the multiplier method for determining the loss of income of Rs.3,000/- per month and multiplier 18 for the disability at 25% and the said amount awarded by the tribunal to the first respondent is reasonable. Therefore, the award passed by the Tribunal Rs.1,75,000/- is liable to be confirmed and accordingly confirmed.

5.As far as the question of non-possession of valid driving licence by the second respondent is concerned, efforts were taken by the Insurance company calling upon the driver and the owner of the vehicle to produce driving licence through Ex.R.5 (notice) R.6 (Acknowledgment card) and R.7 (Return cover). Non-production of the said licence either by the owner or by the driver would enable the Tribunal to draw adverse inference. However, contrary to the evidence, the Tribunal erroneously came to the conclusion that for non-possession of driving licence by the rider of the vehicle, the appellant/Insurance company is liable to pay compensation to the first respondent/claimant and therefore, the said finding rendered by the Tribunal is liable to be set aside and accordingly set aside.

6.In case, if the driver of the offending vehicle does not possess valid driving licence, it is well settled law that, pay and recovery has to be ordered. Accordingly, the appellant/insurance company is directed to pay the entire award amount to the first respondent/claimant and recover the same from the second respondent.

7. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

8.Since it is represented that the appellant/insurance company had already deposited the entire amount before the Tribunal, the first respondent/claimant is permitted to withdraw the entire award amount alongwith interest and costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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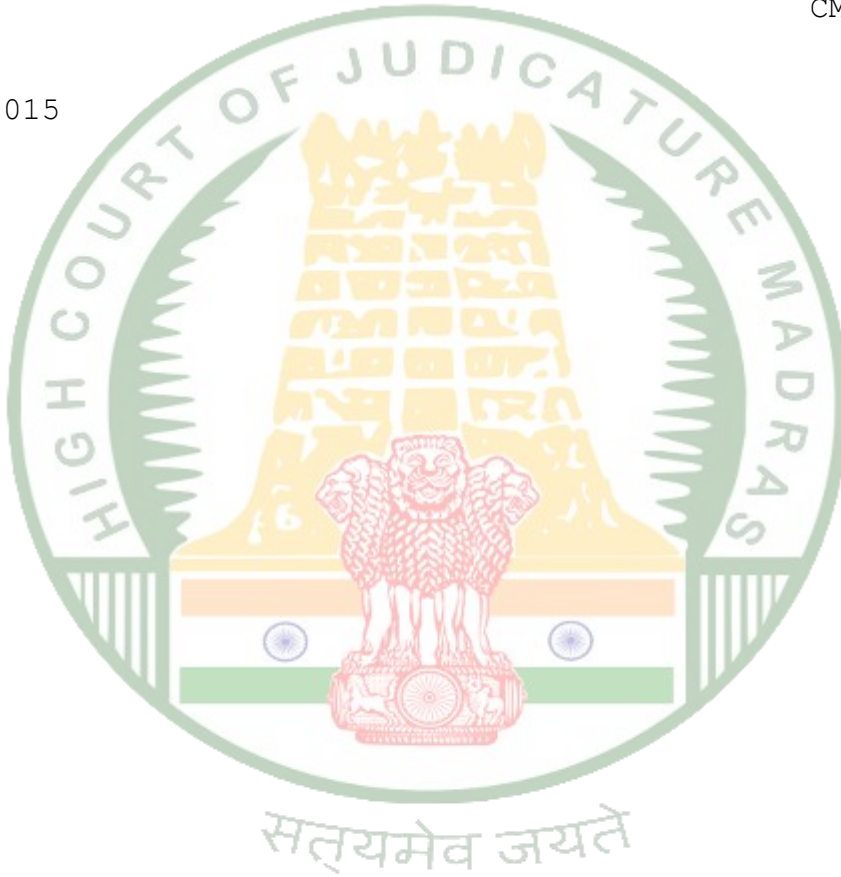
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
V.R.Section, High Court,
Madras.

1 cc to M/s.R.Sreevidhya , Advocate Sr.No.31271

CMA No.238 of 2003

KM(CO)
PMK.11.8.2015



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