IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.2386 & 2387 of 2016
and
C.M.P. Nos.16605 and 16606 of 2016

Royal Sundaram Alliance
Insurance Company Limited,
Branch Office, 46, Whites Road,
Chennai-600 014. .. Appellant in both appeals

Versus

1.K.Lakshmidevi .. 1st respondent in CMA. No.2386 of 2016
1.K.Parthiban .. 1st respondent in CMA. No.2387 of 2016

2.P.Anandan .. 2nd respondent in both appeals
(second respondent herein called absent
and remained exparte before the Tribunal)

Prayer in both appeals: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.02.2012 made in M.C.O.P.Nos.457 & 495/2009 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Tindivanam.

For Appellant in both appeals : Mr.S.Manohar

C O M M O N J U D G M E N T

The Royal Sundaram Alliance Insurance Company Limited has brought these appeals challenging the impugned award dated 14.02.2012 made in M.C.O.P.Nos.457 & 495/2009 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Tindivanam.

2.As both the appeals are arising out of the common award, they are taken up together for common disposal.

3.According to the claimants, on 10-04-2009 at about 6.30 p.m., when the claimant Parthiban was riding the Motor Cycle bearing Registration No.TN 37 AS 2731 and the other claimant Lakshmi Devi was travelling as a pillion rider and were proceeding towards West on the Southern edge of the East West Coimbatore-Avinashi Main Road, the second respondent drove the Mini Auto bearing Registration No.TN 40 W 9482 in a rash and negligent manner and dashed against the Motorcycle with a great force. Due to the same, the claimants were thrown off from the motor cycle and sustained grievous injuries. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the said vehicle.

4.Learned counsel for the Insurance Company/appellant would submit that the learned Tribunal having found that the second respondent herein, who drove the vehicle and owner of the same, alone was liable to pay the compensation, having accepted the fact that the owner of the vehicle had no valid and effective licence to drive the vehicle, which caused the accident and having dismissed the claim as against the appellant, went wrong in directing the appellant to pay a huge compensation and to recover the same from the owner of the vehicle. Therefore, the same needs interference.

5.Learned Tribunal, considering the fact that the multiple injuries sustained by the claimants and they were taking treatment as outpatients and 16% & 20% partial and permanent disability assessed by the doctor, who was examined as P.W.3, with regard to the claimants, has fixed the same at the rate of Rs.2000/- per percentage and arrived at a sum of Rs.32,000/- and Rs.40,000/- towards respective disability. With regard to extra nourishment, transport expenses, loss of comfort and loss of income, a sum of Rs.2,000/-, Rs.1,000/-, Rs.7,000/- & Rs.4,000/- and Rs.2,000/-, Rs.1,000/-, Rs.10,000/- & Rs.5,000/- have been fixed respectively. Finally, a sum of Rs.81,000/- and Rs.93,000/- have been fixed towards total compensation. As the compensation arrived at by the learned Tribunal seems to be reasonable, this Court is not able to find any infirmity in the quantum of compensation fixed by the same.

6.With regard to the question of liability, the learned counsel for the Insurance Company/appellant heavily contented that when the driver cum owner of the vehicle/the second respondent herein has no valid and effective driving license to drive the Mini Goods Auto at the time of accident, the Insurance Company/appellant cannot be held liable to pay the compensation to the claimants, but, the learned Tribunal has saddled the liability on the part of the Insurance Company giving benefit of pay and recovery. As the Insurance Company has been given the liberty to pay the compensation and recover the same from the driver cum owner of the vehicle, this Court, finding no substance in the arguments advanced by the learned counsel for

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the Insurance company, is not inclined to entertain the appeals, since no prejudice would be caused to the Insurance Company/appellant. Accordingly, these appeals fail and the same are dismissed. Consequently, connected C.M.Ps are also dismissed.

7.Since the learned counsel for the appellant/Insurance Company submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing the said amount.

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To

1.The Motor Accidents Claims Tribunal,
(Sub Court), Tindivanam.

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

C.M.A. Nos.2386 & 2387 of 2016