

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Miscellaneous Appeal No.3283 of 2013
and
M.P.Nos.1 of 2013 and 1 of 2014

M/s. United India Insurance Co. Ltd.,
Having office its Divisional Office,
144-B, Kalpana Road
Udumalpet.

... Appellant/III Respondent

vs.

1.Madhuramakrishnan

...1st respondent/petitioner

2. S.Karuppusamy

3. K.Subramaniam

..Respondents 2 &3/

Respondents 1 & 2

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 14.12.2012 passed in M.C.O.P.No.184 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Udumalpet.

For appellant : Mr.J.Chandran

For respondents : Mr.T.Ravichandran for
M/s P.Veena (R1)
R2 & R3 service awaited

JUDGEMENT

(Judgment of the court was delivered by R.SUDHAKAR,J.

Insurance Company has filed this appeal challenging the award dated 14.12.2012 passed in M.C.O.P.No.184 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Udumalpet with respect to "no fault liability" and "quantum of compensation".

2. The accident, in this case, happened on 21.02.2010, on which date, the injured claimant, who was 25 years old, was riding a motorcycle bearing Registration No.TN-41-V-2637 from Palani to Udumalpet, which was hit by a tractor driven by the driver, who had no valid driving licence, as a result of which, the claimant sustained injuries and was given treatment. Claiming compensation to the tune of Rs.15,00,000/-, the injured filed M.C.O.P.No.184 of 2010 before the Motor Accidents Claims Tribunal, (Subordinate Judge), Udumalpet.

3. In support of the claim petition, the injured was examined as P.W.1 and Dr.Madhuperiyasami and Jawahar were examined as P.Ws.2 and 3. Documents Ex.A1 to A16 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Charge sheet
P3	Motor Vehicle Inspector report
P4	Motor Vehicle Inspector report
P5	Wound certificate
P6	Disability certificate
P7	Salary certificate
P8	Medical expenses bills
P9	Discharge summary
P10	Estimated cost of artificial limb
P11	Motorcycle repair charges bills
P12	Transport charges bills
P13	Registration Book
P14	Xerox of the Photo
P15	Permission letter given in respect of P.W.3 to give deposition
P16	Bills in respect of fixation of artificial limb

On the side of the Insurance Company 2 witnesses were examined and six exhibits were marked, the details of which are as follows:-

Ex.No.	Details
R1	Xerox copy of registration certificate of the vehicle of the 2nd respondent

Ex.No.	Details
R2	Copy of Policy
R3	Copy of notice sent by 3rd respondent counsel to 1st and 2nd respondents
R4	1st respondents Postal acknowledgement card
R5	2nd respondents Postal acknowledgement card
R6	Xerox copy of the letter of the Transport Officer to the police

4. The Tribunal, based on oral and documentary evidence on record, held that the accident was due to the rash and negligent driving on the part of the driver of the Tractor, who had no valid driving licence and the Insurance Company was directed to pay the compensation.

5. As far as the quantum of compensation is concerned, the Tribunal granted the following amount as compensation with interest at the rate of 7.5% p.a.

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of Income	Rs.8,56,000/-
2	Artificial Limb (Ex.P16)	Rs.6,25,000/-
3	Medical Expenses	Rs. 89,515/-
4	Repair expense of motor ccyle	Rs. 7,820/-
5	Transport expenses (Ex.P.12)	Rs. 16,650/-
	Total	Rs.15,95,785/-

Though the Tribunal has calculated the compensation in a sum of Rs.15,95,785/-, since the claim was restricted to a sum of Rs.15 lakhs, the Tribunal has awarded a sum of Rs.15,00,000/- with interest at 7.5% p.a.

6. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

7. As far as the plea of no fault liability is concerned, the owner of the tractor paid the fine for non possession of the valid driving licence by the driver of the tractor. The same was accepted by the Tribunal, based on the evidence of R.Ws.1 and 2 and Exs.R1 to R6. As per the terms of the policy of the appellant/Insurance Company, if the driver of the vehicle did not possess a valid driving licence, the Insurer has no liability to pay the compensation. As far as the present case is concerned, admittedly the driver of the vehicle was not in

possession of a valid driving licence, which was recorded by the Tribunal in its Judgment. Hence, we are not inclined to accept the plea of "no fault liability", except to order pay and recover from the owner of the vehicle.

8. Insofar as the quantum of compensation is concerned, though it is a case where multiplier method has to be adopted, the compensation awarded under the heading "Artificial Limb" is on the higher side. At the same time, we find that the Tribunal has omitted to award compensation for (1) Pain and Suffering (2) Nutrition (3) Attendant charges (4) Future medical expenses for the injuries sustained by the claimant in the accident, particularly for amputation of leg below knee. Hence, we are of the view that the amount of compensation to be awarded under the above said headings viz., (1) Pain and Suffering (2) Nutrition (3) Attendant charges (4) Future medical expenses can be inbuilt from out of the compensation of Rs.6,25,000/- granted for artificial limb. As far as the compensation awarded under the other heads are concerned, we do not find any reason to interfere with the same.

9. Thus the award of the tribunal is modified as follows, without reducing the total compensation:-

S1 .N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	Rs.8,56,000/-	Rs.8,56,000/-
2	Artificial Limb (Ex.P16)	Rs.6,25,000/-	-
3	Medical Expenses	Rs. 89,515/-	Rs. 89,515/-
4	Repair expense of motor ccyle	Rs. 7,820/-	Rs. 7,820/-
5	Transport expenses (Ex.P.12)	Rs. 16,650/-	Rs. 16,650/-
6	Pain and Suffering, Nutrition, Attendant Charges and Future Medical Expenses and Artificial Limb (Ex.P.16)		Rs.6,25,000/-
	Total	Rs.15,95,785/-	Rs.15,95,785/-

Since there is no dispute with regard to interest, the interest granted by the Tribunal at 7.5% is confirmed.

10. In the result, the civil miscellaneous appeal is disposed of in the following terms:-

(i) The award of the Tribunal for Rs.15,95,785/- is confirmed.

(ii) The appellant/Insurance Company is directed to deposit the entire award amount as ordered by this Court less the amount already deposited if any, to the credit of M.C.O.P.No.184 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Udumalpet, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(iv) The appellant/Insurance Company is at liberty to recover the compensation awarded from the owner of the vehicle.

There will be no order as to costs in this appeal. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(Sub Court), Udumalpet.

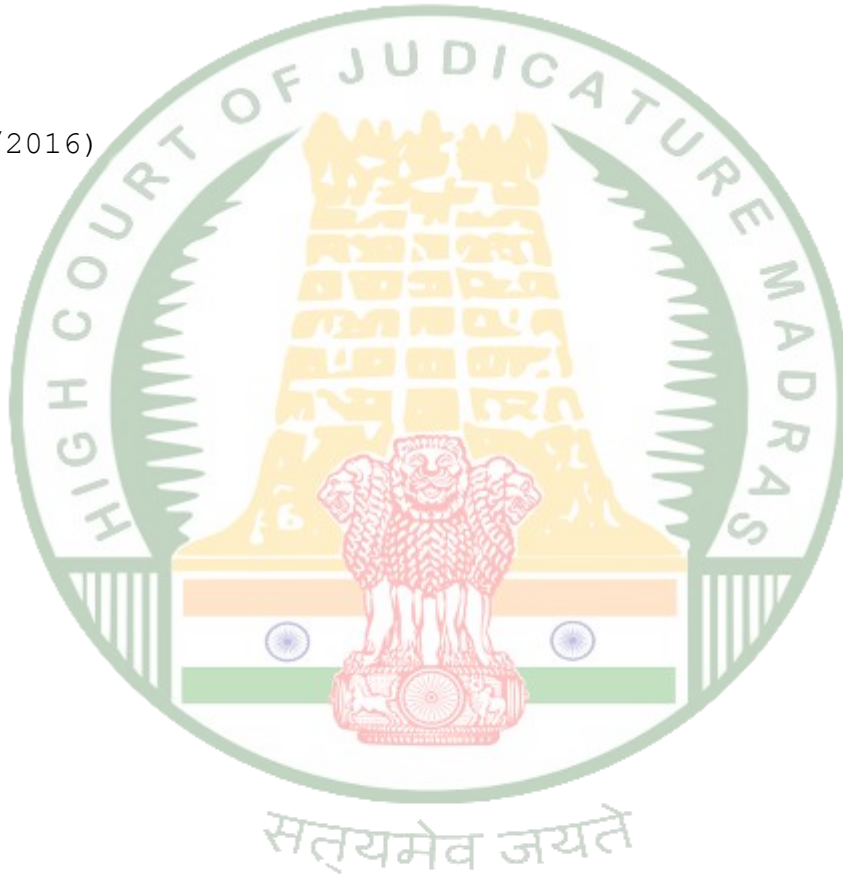
Copy to

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

+1cc to Mr.J.Chandran, Advocate Sr.12379

CMA No. 3283 of 2013

ksj (CO)
srg (22/03/2016)



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