

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2257 of 2012
and MP.No.1 of 2012

United India Insurance Company Ltd.,
Chandra Plaza,
No.48, Arcot Road,
Saligramam,
Chennai - 93.

... Appellant

Vs.

1.J.Banu Besant

2.D.Francis

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 19.11.2011 made in O.P.No.3170 of 2007 on the file of the Motor Accidents Claims Tribunal (In the II Court of Small Causes), Chennai.

For Appellant :Mr.D.Bhaskaran

For R1 :Mr.C.Munusamy
for M/s.C.K.Law Firm

JUDGMENT

The Insurance Company which was arrayed as second respondent before the Tribunal in MCOP.No.3170 of 2007 before MACT (II Court of Small Causes, Chennai) has come forward with this appeal challenging both the liability as well as the quantum of compensation awarded by the Tribunal.

2. On 14.8.2007, at about 1510 hours, the claimant, a college student, while going in a bicycle, was knocked down by an auto rickshaw belonging to the second respondent herein, when it was driven rashly and negligently by its driver. In the said accident, the claimant suffered skull fracture, nasal fracture, fracture to her both the jaws besides other multiple injuries. She moved the Tribunal with a claim of Rs.3,00,000/-.

3. In the counter, the appellant/second respondent before the Tribunal contended (a) that the driver of the offending auto rickshaw did not possess a valid and effective driving licence; and (b) that the auto rickshaw was involved in another accident that took place on 28.09.2007, pursuant to which, one Sekar has preferred a claim petition. As per the policy condition, the

Insurance Company is not liable to indemnify the insured for more than one accident.

4. The Tribunal has found that the driver of the auto rickshaw was negligent and this conclusion it arrived based on the oral testimony of the claimant and the ineffective cross examination of P.W.1 on the point. As to the liability of the Insurance Company is concerned, the Tribunal has appreciated Ext.R3, the driving licence of the auto rickshaw driver discloses that he was permitted to drive only a motor cycle, whereupon it applied the doctrine of pay and recover and awarded a sum of Rs.1,20,000/- as compensation payable with interest at the rate of 7.5% per annum.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials on record.

6. On perusing the award, this Court does not find any aberration in the approach of the Tribunal as to the quantum awarded. The claimant / first respondent herein was a young girl of 19 years at the time of accident, and for all injuries that she had suffered and for the disability that had visited her, the Tribunal had awarded only Rs.70,000/-. This Court finds that the compensation awarded is just and fair. So far as absence of effective and valid licence is concerned, the law is presently settled vide the authority in Iffco Tokyo General Insurance Co. Ltd., Vs. A.Jafer Sadiq & Others [2012(1) TN MAC 394 (DB)] that the Tribunal can apply a doctrine of pay and recover. So, I find the award of the Tribunal is in order.

7. I therefore, confirm the award passed by the Tribunal and the appellant/Insurance Company is directed to deposit the award amount with all accrued interest, if not already deposited within a period of four weeks from the date of receipt of a copy of this order and on such deposit the claimant is entitled to receive the award amount forthwith. The appeal is dismissed without costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To :

1.The Motor Accidents Claims Tribunal
Court of Small Causes No.II
Chennai.

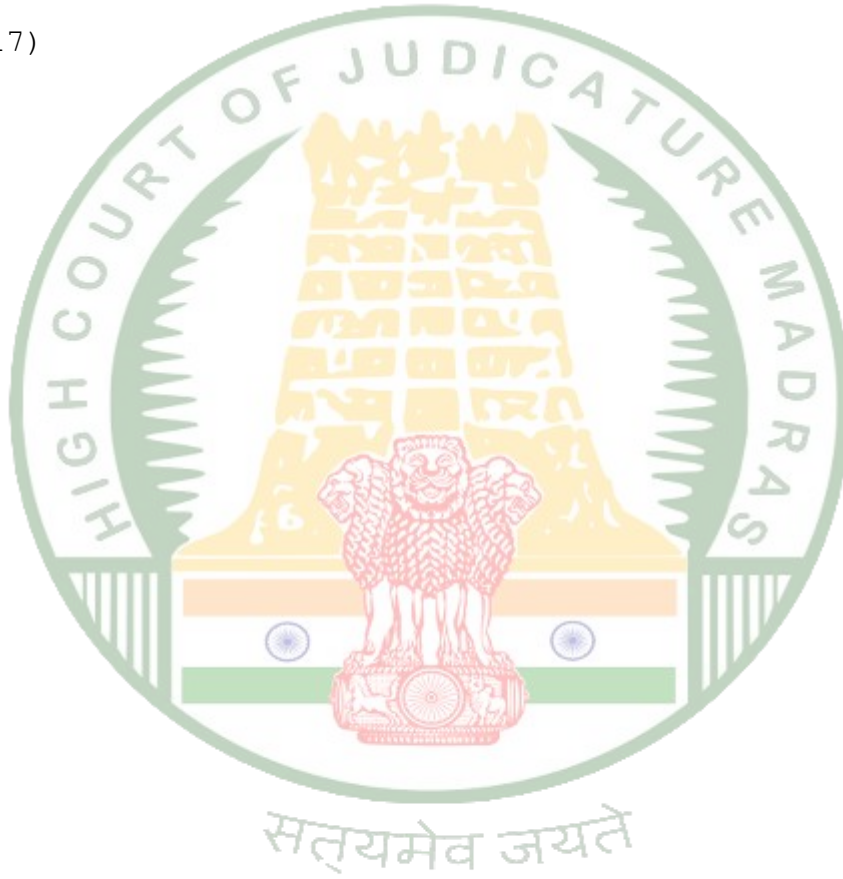
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Munusamy,Advocate sr.8699

+1cc to Mr.Baskaran,Advocate sr.8771

CMA.No.2257 of 2012

mg (co)
ss (8/8/2017)



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