



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.Nos.845 and 846 of 2017
and C.M.P.Nos.4253 and 4254 of 2017

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
Hosur.

... Appellant/2nd Respondent in both
appeals

versus

1. Moorthy ... 1st Respondent/Petitioner in
C.M.A.No.845 of 2017
- 2.T.Govindaraj ... 1st respondent/Petitioner in
C.M.A.No.846 of 2017
3. R.Gowran ... 2nd respondent/1st respondent
in both CMAs

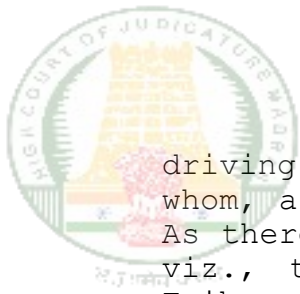
Prayer : These appeals filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 13.06.2001 made in M.A.C.T.O.P.Nos.186 and 187 of 1999 on the file of the Motor Accident Claims Tribunal (II Additional District & Sessions Judge and Chief Judicial Magistrate), Krishnagiri.

For Appellant : M/s.S.J.Jagadev

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the award passed in M.C.O.P.Nos.186 and 187 of 1999, on the file of the Motor Accident Claims Tribunal (II Additional District & Sessions Judge and Chief Judicial Magistrate), Krishnagiri.

2. In M.C.O.P.No.186 of 1999, the injured claimant claimed a sum of Rs.2,00,000/- as compensation and in respect of M.C.O.P.No.187 of 1999, the same amount has been claimed as compensation by the injured. Both of them were passengers in the Mini Lorry. Both of them have stated in the evidence that the accident took place only on account of rash and negligent



driving on the part of the driver of the minor lorry, against whom, a case under Sections 279 and 337 IPC has been registered. As there was no evidence adduced on the side of the respondents, viz., the owner of the mini lorry as also the insurer, the Tribunal accepted the evidence adduced on the side of the claimants and arrived at a finding that the accident had taken place only on account of rash and negligent driving on the part of the driver of the mini lorry.

3. Insofar as the liability is concerned, the contention of the Insurance Company before the Tribunal was that the driver was not having a valid driving licence and there was no batch available and in order to prove the same, the notice (Ex.P5), which was sent to the owner of the mini lorry and which was received by owner along with Acknowledgment Card was marked Ex.P6.

4. It is the contention of the Insurance Company before this Court that when the Tribunal has given a finding that the driving licence is not a valid and effective one, the Insurance Company should not have been fastened with the liability to pay the compensation. As regards the compensation is concerned, the compensation awarded by the Tribunal is very high and, therefore, requires interference.

5. In M.C.O.P.No.186 of 1999, the claimant has suffered fracture in the left hand and he had taken treatment for one month. The Doctor has certified the disability at 30%. Considering the same, the Tribunal has awarded only a sum of Rs.30,000/- as compensation.

6. Insofar as the claimant in M.C.O.P.No.187 of 1999 is concerned, he has suffered crush injury over the left hand and he has also suffered injury over left knee. The Doctor has certified the disability at 25%. There was restriction of movement of the fingers. Considering the disability, the Tribunal has awarded only a sum of Rs.25,000/- as compensation. Challenging the award in both the cases, the Insurance Company has filed these appeals.

7. When it is the case of the Insurance Company that the driver was not possessed of a valid driving licence, the burden lies on the Insurance Company to prove the same. However, no evidence has been adduced by the insurance company to prove the said aspect. Therefore, the contention of the insurer that it is not liable to pay compensation cannot be accepted. Though the insurance company has filed documentary evidence to show that notices have been sent to the owner to produce the driving licence and batch, which was received by the owner, no further steps have been taken by the insurance company to prove that the



driver was not in possession of a valid driving licence and batch. Mere sending of notice to the owner and showing proof of its receipt, it cannot be concluded that the driver was not in possession of a valid and effective driving licence. Substantial documentary evidence should have been produced by the Insurance company to show that the driver was not in possession of valid and effective driving licence. Further, it is not the case of the Insurance Company that the driver was not in possession of a licence. The insurance company should have resorted to other means to adduce proof, which it has failed to. Therefore, the liability fastened on the Insurance company by the Tribunal to pay compensation cannot be found fault with.

8. Insofar as the quantum of compensation is concerned, the Tribunal, by considering the nature of injury and period of treatment taken by the injured, has awarded just paltry sum of Rs.30,000/- and Rs.25,000/- as compensation to each claimant. The said compensation, even on the face of it is very low and therefore, interference with the same is not warranted.

9. There being no merits, both the the appeals are liable to be dismissed and, accordingly, the same are dismissed confirming the award passed in M.C.O.P.Nos.186 and 187 of 1999, on the file of the Motor Accident Claims Tribunal (II Additional District and Sessions Judge and Chief Judicial Magistrate), Krishnagiri. Consequently, connected miscellaneous petitions are closed.

10. It is submitted by the learned counsel for the insurance company that the entire compensation amount has been deposited and the same has been withdrawn by the claimants. The said statement is recorded.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ogy/GLN
To

1. The Motor Accident Claims Tribunal
(II Additional District and Sessions Judge,
and Chief Judicial Magistrate), Krishnagiri.

C.M.A.Nos.845 and 846 of 2017

NRJK(CO)
CS/19/04/18