

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1268 of 2008
and MP.No.1 of 2008

M/s National Insurance Co. Ltd.,
Nethaji Road,
Manjakuppam,
Cuddalore.

... Appellant/2nd Respondent

Vs

1.Minor Porselvi
rep. by next friend, mother and guardian Vinothini
... 1st Respondent/Petitioner

2.Aranganeedimannan ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 31.10.2007 made in MACT O.P.No.1665 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Judge) at Cuddalore.

For Appellant : Mr.M.Krishnamurthy

For Respondent : R2 - Exparte
R1-Notice not served.

सत्यमेव जयते
J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 31.10.2007, passed by the Motor Accident Claims Tribunal (Principal Judge) at Cuddalore in M.C.O.P No.1665 of 2004.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent sustained injuries on 03.11.2003, as a result of an accident caused by a car bearing Registration No.TN.31.S.4777 owned by the second respondent and insured with the Appellant.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1665 of 2004, seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its Award dated 31.10.2007 in M.C.O.P. No.1665 of 2004, directed the Appellant to pay the first respondent a sum of Rs.1,40,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded cost.

3.Aggrrieved by the Award dated 31.10.2007, passed by the Motor Accident Claims Tribunal in M.C.O.P. No.1665 of 2004, the instant appeal has been filed.

4.Heard, Mr.M.Krishnamurthy, learned Counsel for the Appellant. Till date, notice has not been served on the first respondent. Since the appeal pertains to the year 2008 and this Court is going to confirm the Award, there is no necessity to serve the notice on the first respondent.

5.According to the learned Counsel for the Appellant, the primary ground for the challenge in the instant appeal is that the driver of the vehicle insured with the Appellant did not possess a valid driving license at the time of the accident. Further, he would contend that the vehicle also did not have a proper permit and a fitness certificate. Therefore, according to him, the Appellant is not liable to compensate the first respondent.

6.This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the learned Counsel for the Appellant observes the following:

(a) The age of the first respondent is not disputed by the Appellant before the Tribunal.

(b)The injuries sustained by the first respondent as a result of the accident has also not been disputed by the Appellant before the Tribunal.

(c)As a result of the accident, the first respondent has sustained multiple fractures resulting in grievous injuries.

(d)She was studying in the 7th standard at the time of the accident.

7.The Tribunal has Awarded compensation to the first respondent in the following manner:

- a. Rs.45,000/- towards disability compensation,
- b. Rs.20,000/- towards medical expenses,
- c. Rs.5,000/- towards nourishment charges,
- d. Rs.5,000/- towards transportation cost,
- e. Rs.5,000/- towards attender charges,
- f. Rs.10,000/- towards compensation for two grievous injuries,

- g. Rs.25,000/- towards pain, shock and sufferings,
h. Rs.25,000/- towards loss of amenities.

In all put together, a sum of Rs.1,40,000/- was awarded a compensation to the first respondent.

8.In the considered view of this Court, the compensation awarded to the first respondent, considering 45% disability suffered by her as a result of the accident, the compensation awarded by the Tribunal is a just compensation. Even though, the first respondent may not be separately entitled for compensation towards grievous injuries, this Court is of the considered view that she has not been adequately compensated for the same under the other heads of compensation. Hence the compensation awarded towards grievous injuries is adjusted in other heads of compensation. Over all, the compensation awarded by the Tribunal to the first respondent is a just compensation.

9.In the instant case, pay and recovery also cannot be granted since, there is a clear finding given by the Tribunal that the driver of the vehicle was possessing a valid driving license as seen from Ex.-P6. Further, the Appellant has also not issued notice to the insured, calling upon him to produce the fitness certificate and permit.

10.Under the said circumstances, this Court cannot apply the doctrine of pay and recovery. In the result, there is no merit in the instant appeal. Accordingly, the Appeal shall stand dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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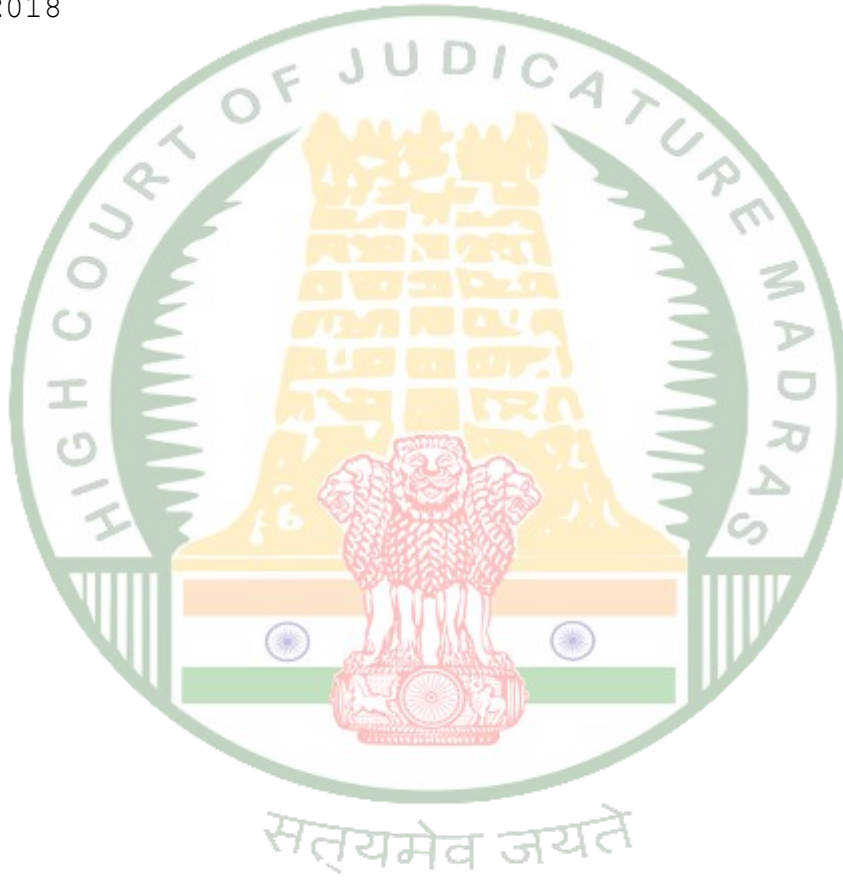
1.The Motor Accident Claims Tribunal
(Principal Judge) at Cuddalore.

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

+1cc to Mr.M.Krishnamurthy, Advocate sr.no.61986

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