

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2915 of 2006

and

MP No.2 of 2006 and CMP No.18918 of 2019

Divisional Manager,
New India Assurance Co. Ltd.,
Bharathi Road,
Cuddalore.

...Appellant/2nd Respondent

.Vs.

1.P.Mohan

2.Ramesh Kumar

Respondents/Petitioner/

1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.01.2006 passed in MCOP.No.1272 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Sub-Judge), Cuddalore.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Mr.G.Jayachandran for R1

No Appearance for R2

JUDGMENT

The appellant / New India Assurance Co. Ltd., is the 2nd respondent in MCOP No.1272 of 2004 on the file of the Principal Subordinate Judge / Motor Accident Claims Tribunal, Cuddalore.

2. The 1st respondent filed the above said claim petition in MCOP No.1272 of 2004 under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 10.04.2004 when he was walking with his wife along Vadugapalayam bus stand. According to the claimant, a speeding motor cycle bearing Registration No.TN 31 D 822 belonging to the 2nd respondent and insured with the appellant hit him, as a result of which he sustained injuries all over his body. His further contention is that the rash and negligent riding of the rider of motor cycle was the cause of the accident and that since the said vehicle was insured with the appellant, both the owner of

the vehicle and the Insurance Company are jointly and severally liable to pay compensation to him.

3. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, after analysing the evidence on record awarded a compensation of Rs.1,58,700/- together with interest at the rate of 7.5% per annum to the claimant and directed the owner of the two-wheeler as well as the Insurance Company to pay the claim amount jointly and severally. Aggrieved over the orders passed by the Tribunal, the present appeal is filed.

4. Mr. C.Ramesh Babu, learned counsel appearing for the appellant would contend that the Tribunal cannot fix the liability on the Insurance Company, when the rider of the motor cycle bearing Registration No.TN-31-D-822 was not possessed of a valid driving license on the date of accident.

5. Per contra, Mr.G.Jeyachandran, learned counsel appearing for the claimant / 1st respondent contended that the rider of the motor cycle was, in fact, in possession of valid driving license and a copy of the same was also produced before this Court. Therefore, the Tribunal was right in concluding that the owner of the two-wheeler as well as the present appellant are jointly and severally liable to pay compensation to the claimant.

6. As regards the quantum of compensation, the Tribunal had awarded Rs.1,58,700/- with interest at the rate of 7.5% per annum. The claimant had sustained a fracture on his shoulders and the Doctor Mr.Sivasubramanian (PW2) had assessed the partial permanent disability as 45%.

7. It is an admitted fact that the claimant was a driver by profession and the Tribunal, after considering all the aspects of the case had awarded a compensation of Rs.1,58,700/- to the claimant. The award passed by the Tribunal cannot be said to be exorbitant and therefore, the appeal filed by the Insurance company is liable to be dismissed.

8. In the result,

- (i) The Civil Miscellaneous Appeal is dismissed. No costs.
- (ii) The order passed by the tribunal is upheld.

(iii) The appellant, New India Assurance Company Limited is directed to deposit the entire compensation awarded by the tribunal i.e., Rs.1,58,700/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.1272 of 2006 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, claimant is at liberty to withdraw the same after following due process of law.

(v) Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (Ad I)

/true copy/

Sub Asst. Registrar

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To

1.The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Cuddalore.

2.The Section Officer
VR Section
High Court Madras

+1 cc to Mr.G.Jayachandran Advocate sr28826

+1 cc to Mr.C.Ramesh Babu Advocate sr78805

सत्यमेव जयते

CMA.No.2915 of 2006

sr(co)

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