

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1617 of 2009
& M.P.No.1 of 2009

The Branch Manager,
The Oriental Insurance Co., Ltd.,
D.O.1, No.4, Head Quarters Road,
Coimbatore.

.. Appellant/2nd Respondent

Vs.

1. Chinnappan ..1st Respondent/Claimant
2. Jayagopi
(R2 set exparte before the Tribunal)
..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.08.2008 made in MCOP.No.1438 of 2006 on the file of Motor Accident Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur.

For Appellant : Mr.M.Raja Sekhar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order and decree dated 4.8.2008 passed by the Motor Accidents Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur, in MCOP.No.1438 of 2006.

2. The case in brief is as follows:

On the fateful day, i.e., on 13.08.2006, at 5.30pm, the first respondent was walking on Chinnadipalayam Pirivu Road, Tirupur. At that time, a bike bearing registration No.TN 23 K 7259 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit the pedestrian from behind. As a result of the same, the first respondent sustained grievous injuries in all over the body. He filed a claim petition claiming a sum of Rs.5,00,000/- as compensation. The Tribunal, after examining the oral and documentary evidence adduced by the parties, awarded a total

compensation of Rs.28,000/- with interest at the rate of 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Insurance company has filed the present appeal.

3. The learned counsel for the appellant Insurance Company has disputed the liability fastened on the insurance company on the ground that the rider of the motor cycle did not possess a valid driving licence and he drove the vehicle with two pillion riders and hence, the owner of the vehicle committed the breach of policy conditions. He has also disputed the quantum of compensation awarded by the Tribunal, contending that the same is excessive and exorbitant and hence, the same needs reduction by this Court.

4. Heard the learned Counsel for the appellant and perused the materials available on record carefully and meticulously.

5. Records of proceedings would disclose that the respondents 1 and 2 are not ready in notice. Even though a conditional order of Stay was granted way back in the year 2009, the appellant Insurance company has not taken proper steps to serve papers on the other side even at this length of time. However, considering the passage of time, this Court is inclined to proceed with this appeal on merits.

6. There is no dispute with regard to the manner of accident. What was disputed herein is the liability of the appellant insurance company to pay compensation to the first respondent/claimant. According to them, the rider of the motorcycle did not possess valid and effective driving licence at the time of accident and he rode the vehicle with two pillion riders, which are violation of the policy conditions and hence, the insurance company is not liable to pay any compensation. To substantiate the said contention, they examined one Saroja as R.W.1/Administrative Officer of the appellant Insurance Company, who has deposed that the rider of the two wheeler possessed driving licence to drive a light motor vehicle and he did not possess valid and effective driving licence to ride the motorcycle. Ex.B1 is the copy of the insurance policy; Ex.B2 is the driving licence of the rider. However, the Tribunal after examining the oral and documentary evidence adduced by the parties and taking note of the decisions of the Supreme Court in National Insurance company Ltd v. Swaran Singh [2004 ACJ 1 (SC)] and New India Assurance Company Limited v. Parveen Kumar [2005 ACJ 1178], has observed that as per the policy conditions, even a person holding an effective LLR may also ride the vehicle and hence, the act of the rider of the vehicle involved in the accident, could not be held as violation of the policy conditions and accordingly, fastened the liability on the appellant insurance company. Further, in the absence of any

concrete material to prove the contention of the appellant that the rider rode the vehicle with two pillion riders at the time of accident in violation of the policy conditions, the finding of the Tribunal with regard to liability of the appellant insurance company, warrants no interference by this Court.

7. As regards the quantum of compensation, P.W.1/first respondent/claimant in his evidence, deposed that he was aged 54 years and was earning a sum of Rs.4500/- per month; he further claimed that in the accident, he sustained grievous injuries in all over the body; and he produced Ex.A3 disability certificate at 15%. P.W.3/doctor in his evidence narrated about the permanent disability sustained by the respondent/claimant due to loss of teeth and deformity in face. The Tribunal, after considering the materials and evidence let-in by the respondent/claimant, determined Rs.15,000/- towards permanent partial disability, Rs.10,000/- towards pain and suffering and loss of amenities, Rs.1,000/- towards extra-nourishment, Rs.500/- towards transport expenses and Rs.1,500/- towards loss of income during the treatment period and thus, awarded Rs.28,000/- as total compensation. Having regard to the nature of the injuries sustained by the first respondent/claimant, the amounts so awarded by the Tribunal under the said heads, are just and very reasonable and hence, the same are hereby confirmed.

8. In such view of the matter, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the entire award amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS, within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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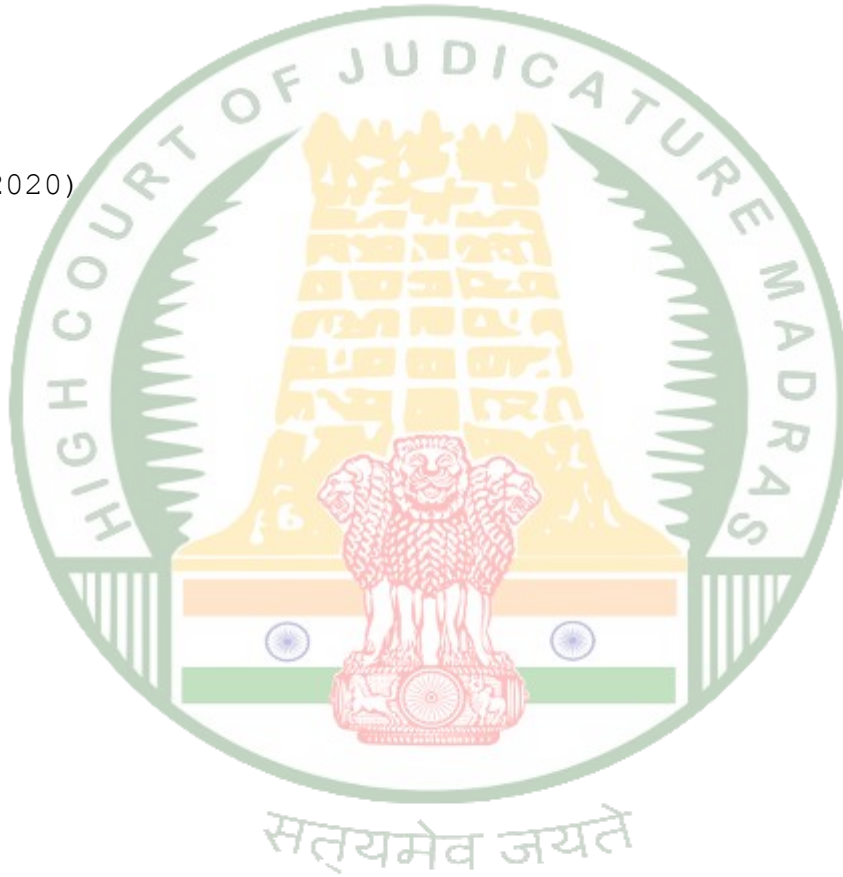
1. The Motor Accidents Claims Tribunal,
No.V, Fast Track Court,
Coimbatore at Tiruppur.

2.The Section Officer,
VR Section,
High Court,
Madras-104.

+1 CC to Mr.M.Raja Sekhar, Advocate sr 75755.

C.M.A.No.1617 of 2009
& M.P.No.1 of 2009

CP(CO)
SP(03/03/2020)



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