

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.4120 & 4121 of 2008
and
M.P.Nos.1 and 1 of 2008

United India Insurance Co. Ltd.,
Junction Main Road, 5 Road,
Salem-Branch Office,
Peramanur Main Road,
Salem - 7.

... Appellant in both CMAs./
2nd Respondent in MCOP Nos:208/05 & 1652/04

...Vs...

1.K.Raman
2.G.Kalaikumar

... Respondents in CMA No.4120/2008/
Petitioner & 1st Respondent in MCOP No.208/05

1.R.Kalaiselvi
2.G.Kalaikumar

... Respondents in CMA No.4121/2008/Petitioner &
1st Respondent in MCOP No.1652/04

Civil Miscellaneous Appeals filed under Section 173 of the
Motor Vehicles Act, 1988, against the common judgment and
decree, dated 03.01.2008 made in M.C.O.P.Nos.208 of 2005 and
1652 of 2004 on the file of the Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.I, Salem.

For Appellant : Mr.S.Arun Kumar
For R1 : Mr.R.Syed Mustafa
For R2 : No Appearance

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the
common judgment and decree, dated 03.01.2008 made in
M.C.O.P.Nos.208 of 2005 and 1652 of 2004 on the file of the
Motor Accidents Claims Tribunal, Additional District Judge, Fast

Track Court No.I, Salem.

2.The case in brief is as follows:

On the fateful day, ie. on 13.06.2004 at about 01.30 p.m., the first respondent in these appeals were proceeding in the TVS-50 two-wheeler bearing Reg.No.TN-30-Z-1759 as rider and pillion rider. When they were proceeding near Murugesan land in Kolinjipatti, the Hero Honda CD Dawn two-wheeler bearing Reg.No.TN-30-X-4352 came from the opposite direction in a rash and negligent manner and dashed against the TVS-50. Due to the said impact, the first respondent in these appeals sustained grievous injuries. They filed separate claim petitions before the Tribunal for compensation. Against their claim, considering the materials and evidence, the Tribunal has awarded a sum of Rs.1,70,863/- with interest at the rate of 7.5% per annum from the date of petition in respect of the first respondent in CMA No.4120 of 2008 and a sum of Rs.33,677/- with interest at the rate of 7.5% per annum from the date of petition in respect of the first respondent in CMA No.4121 of 2008.

3.Challenging the same, the appellant Insurance Company has come up with these appeals.

4.The learned counsel for the appellant / Insurance Company has submitted that the Tribunal has erred in not placing reliance on the evidence of R.W.1, Ex.A3 and Exs.B1 to B4 to hold that the rider of the motor cycle has no valid driving licence at the time of accident and hence, the Tribunal ought to have ordered for pay and recovery. It is also submitted that the Tribunal ought to have drawn adverse inference against the second respondent as he has neglected to appear before the Court, despite receiving the Court summons. It is also submitted that the compensation awarded by the Tribunal in these cases are excessive.

5.On the other hand, the learned counsel for the claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the claimants and perused the materials and evidence available on record, carefully and meticulously.

7.An analysis of the common award passed by the Tribunal would go to show that the Tribunal has drawn adverse inference against the appellant herein based on the following facts:

1. The documents, namely, Exs.B1 to B4 have been prepared by the Investigator of appellant herein and no document has been filed to establish the fact that the appellant herein is authenticated to do individual investigation.

2. There is no evidence available on record to prove that the three or four members travelled in the vehicle, as against the terms and conditions of the policy.

3. Accepting the documents produced by the claimants and rejecting the documents produced by the appellant herein, the liability was fastened on the appellant herein.

8. This Court is of the view that the adverse inference drawn by the Tribunal against the appellant herein is incorrect. It is established by way of evidence and documents that more than two persons have travelled in the vehicle at the time of accident and hence there was breach of policy conditions. Further, the second respondent neglected to appear before the Court despite receiving Court summons. The evidence of RW1 coupled with Exs.B1 to B4 proves that the second respondent herein had no valid driving licence at the time of accident. Merely because, Exs.B1 to B-4 were prepared by the Investigator of the appellant herein, the same cannot be brushed aside without any rhyme or reason. The Tribunal can very well summon, examine and cross examine the author of the said documents to prove the authenticity thereof. Hence, this Court is of the view that the Tribunal ought not to have fastened the liability on the appellant herein and should have ordered for pay and recovery. Accordingly, the finding of the Tribunal on liability is modified to that extent.

9. So far as the quantum of compensation is concerned, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

10. In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

11. The appellant-Insurance Company is directed to deposit the award amounts along with interest and costs, as ordered by

the Tribunal, less the amounts already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle in accordance with law. On such deposit, the first respondent in these appeals / claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi/srk

To

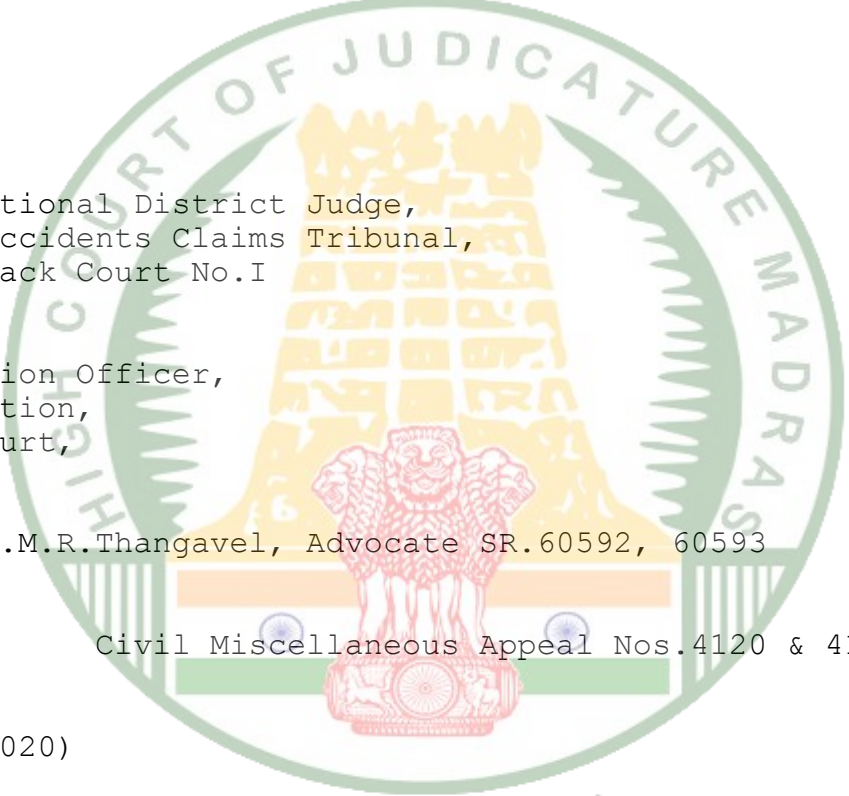
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.I
Salem.

2.The Section Officer,
V.R.Section,
High Court,
Madras

+2cc to Mr.M.R.Thangavel, Advocate SR.60592, 60593

Civil Miscellaneous Appeal Nos.4120 & 4121 of 2008

SAI(CO)
CB(15/06/2020)



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