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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2516 of 2010

Poomani @ Poongavanam

... Appellant

Versus

1. P. Murugesan

2. P.Sachithanandan

3. The United India Insurance Co., Ltd.,
1170, Mettur Road,
Muthaiah Complex,
Erode - 11.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and decree dated 12.11.2009 made in M.C.O.P.No.28 of 2008 on the file of the Motor Accidents Claims Tribunal /Chief Judicial Magistrate, Erode.

For Appellant : Mr.N.Manoharan

For R1 : Mrs.Zeenath Begum
for Mr.T.Murugamanickam

For R2 : No appearance

For R3 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 12.11.2009 made in M.C.O.P.No.28 of 2008 on the file of the Motor Accidents Claims Tribunal /Chief Judicial Magistrate, Erode.

2. The claimant who is the appellant herein has filed this Civil Miscellaneous Appeal seeking for enhancement of compensation. She has filed a claim petition alleging that



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on 09.03.2008 at about 10.00am the claimant was standing on the extreme side of the Kunnathur road at Krey Nagar bus stop, the first respondent who was the driver-in-charge of the Car bearing registration No.TN:33:P:3963 drove the same in a rash and negligent manner coming from west to east and hit against the petitioner and caused grievous injuries to the petitioner and also caused injuries to some other persons and caused death of one Kannammal. The first respondent was solely responsible for the said accident.

3. The claim made by the claimant was resisted by the Insurance Company contending that the driver of the vehicle did not possess a valid and effective driving licence at the time of accident, as such there is a violation of the policy condition on the part of the owner of the vehicle, hence, the Insurance Company is not liable to pay any compensation amount to the victim.

4. Before the Tribunal, the claimant was examined as PW.1 and Dr.S.M.Duraisamy was examined as PW.2 and thirteen documents were marked as Ex.P1 to Ex.P13. On the side of the respondents, one K.Nanthakumar / Assistant Manager of the United India Insurance Company Limited, Erode was examined as RW.1 and one document was marked as Ex.R1. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.67,350/- as compensation to the claimant.

5. The learned counsel for the appellant would contend that the exoneration of the insurance company is bad in law and the compensation is too low.

6. The counsel for the first respondent/driver would contend that the accident was occurred not due to the rash and negligent driving of the first respondent/driver. But due to the claimant, who has suddenly crossed the road and sustained injuries.

7. The learned counsel for the third respondent contended that since, the driver of the vehicle did not possess a valid and effective driving licence at the time of the accident, the Insurance Company is not liable to pay any compensation.

8. Heard the submissions made on either side and perused the materials available on record.

9. Based on PW1's evidence, the Tribunal concluded that the accident has taken place due to the rash and negligent driving of the driver/ first respondent herein. The same is hereby confirmed.



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10. On the point of quantum, it is seen that PW2 Dr.S.M.Duraisamy has issued Ex.P11 permanent disability certificate, based upon Ex.P12 and Ex.P8, wherein, it is stated that the injured sustained disability to the tune of 20% and accordingly, Rs.40,000/- was granted by the Tribunal. The same is hereby confirmed. With regard to Simple wound, Medical expenses, Loss of income, future Prospects, extra nourishment and damages to clothing, the Tribunal awarded a sum of Rs.21,500/-. The same is hereby confirmed. With regard to attendant charges a sum of Rs.5,000/- granted and with regard to transportation instead of Rs.850/-, Rs.2,500/- is granted and with regard to pain and sufferings instead of Rs.5000/-, Rs.10,000/- is granted and in fine the amount of Rs.79,000/- is reassessed.

11. Taking into consideration that at the time of accident the first respondent possess the driving licence, and in the light of the decision rendered before the Hon'ble Supreme Court of India in the case of [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the third respondent/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge.

12. Thus, the award passed by the Tribunal is modified and enhanced as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.40,000/-	Rs.40,000/-
Simple wound	Rs.10,000/-	Rs.10,000/-
Medical expenses	Rs.1,500/-	Rs.1,500/-
Transportation	Rs.850/-	Rs.2,500/-
Loss of income	Rs.2,500/-	Rs.2,500/-
Pain and Sufferings	Rs.5,000/-	Rs.10,000/-
Future prospects	Rs.5,000/-	Rs.5,000/-



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extra nourishment	Rs.2,000/-	Rs.2,000/-
Damages to clothing	Rs.500/-	Rs.500/-
Attendant charges	----	Rs.5000/-
Total	Rs.67,350/-	Rs.79,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.67,350/- awarded by the Tribunal is hereby enhanced to Rs.79,000/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The third respondent/Insurance company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement and recover the same from the driver of the car i.e. the first respondent herein. On such deposit being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Erode.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.N.Manoharan , Advocate SR.No. 27256
+1cc to Mr.T.Ravichandran , Advocate SR.No. 28118
+1cc to Mr.Balu rangasamy, Advocate SR.No. 27296

CMA No.2516 of 2010

cp
A.SK(10/10/2019)