

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.2473 OF 2009

AND

M.P.NO.1 OF 2009

The National Insurance Company Limited
Branch Office No.25, Coimbatore Road,
Pollachi Post, Coimbatore District.

... Appellant/3rd Respondent

Vs.

1. M.Murugan
2. R.Selvakumar
3. T.Rajendran

... Respondents/1st Petitioner &
1st and 2nd Respondents

(R2 & R3 set exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.02.2008 made in MACTOP.No.906 of 2002 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram.

For Appellant : Mrs.N.b.Surekha
For R1 : Mr.Ma.Pa.Thangavel

J U D G M E N T
सत्यमेव जयते

Calling in question the judgment and decree dated 06.02.2008 passed by the Motor Accidents Claims Tribunal, Sub Court, Dharapuram in MCOP.No.906 of 2002, the appellant Insurance Company has preferred this Civil Miscellaneous Appeal.

2.The case in brief, is as follows:

On the fateful day, i.e., on 27.02.2002, at about 05.00pm, the first respondent/claimant was walking on Pollachi Town 4th street. At that time, a motorcycle bearing registration No.TN41/F 3736 belonging to the third respondent and insured with the appellant insurance company, came in a rash and

negligent manner from the opposite direction and dashed against the first respondent/claimant. Due to the said impact, the first respondent/claimant sustained multiple injuries in all over the body. Claiming a compensation of Rs.3,00,000/-, he filed a claim petition before the Tribunal, which, on consideration of the materials and evidence available on record, awarded a total compensation of Rs.97,499/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company is before this Court with the present appeal.

3.The learned counsel for the appellant Insurance Company submitted that the rider of the motorcycle did not possess a valid driving licence and thereby, the owner of the vehicle has violated the policy condition and hence, the appellant is not liable to pay compensation to the claimant. The learned counsel also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

4.Per contra, the learned counsel for the first respondent/claimant submitted that the Tribunal after properly analysing the oral and documentary evidence available on record, has rendered its findings on negligence and liability and awarded the just compensation and hence, the same do not call for any interference by this Court.

5.Heard the learned counsel appearing for the appellant and learned counsel appearing for the first respondent and perused the materials available on record carefully and meticulously.

6.The learned counsel for the appellant Insurance Company has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent riding of the rider of the Motorcycle and hence, the said finding of the Tribunal need not be interfered with by this Court.

7.With regard to liability, according to the appellant insurance company, the rider of the motorcycle did not possess valid driving licence and hence, the owner of the vehicle has violated the policy condition. Admittedly, no driving licence was produced before the Tribunal. Further, no witness was examined to prove that the rider of the motorcycle was having a valid licence at the time of accident. As such, there was violation of policy conditions by the owner of the vehicle. Hence, this Court is of the view that since the appellant insurance company has not proved that there was no insurance coverage for the vehicle, the insurance company has to pay the compensation to the first respondent/claimant at first instance and then recover the same from the owner of the vehicle. Accordingly, the award of the Tribunal is modified.

8.As regards the quantum of compensation awarded by the Tribunal, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 29 years and was earning a sum of Rs.6,000/- per month. However, no proof was produced to substantiate the same. P.W.2/Doctor has deposed in his evidence that the first respondent/claimant sustained grievous injuries in all over the body. After assessing the first respondent/claimant, the doctor issued Ex.P14-disability certificate to the tune of 20%. Ex.P13 is X-ray, which revealed that the first respondent/claimant sustained multiple injuries. The Tribunal, after considering the materials and evidence let-in by the first respondent/claimant, has determined Rs.5000/- towards loss of income during treatment period, Rs.4,000/- towards transportation, Rs.1000/- towards extra Nourishment, Rs.15,000/- towards pain and suffering, Rs.40,000/- towards loss of future earning capacity, Rs.28,499/- towards medical expenses, Rs.4000/- towards future medical expenses and thus, awarded total compensation of Rs.97,499/-. Having regard to the nature of the injuries sustained and the period of treatment taken by the first respondent/claimant, the amounts so awarded by the Tribunal under the above heads, are just and reasonable and hence, the same need not be interfered in the hands of this Court.

9.In such view of the matter, this appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to first deposit the entire award amount along with interest and costs, after deducting the amount, if any already deposited, 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 being made, 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.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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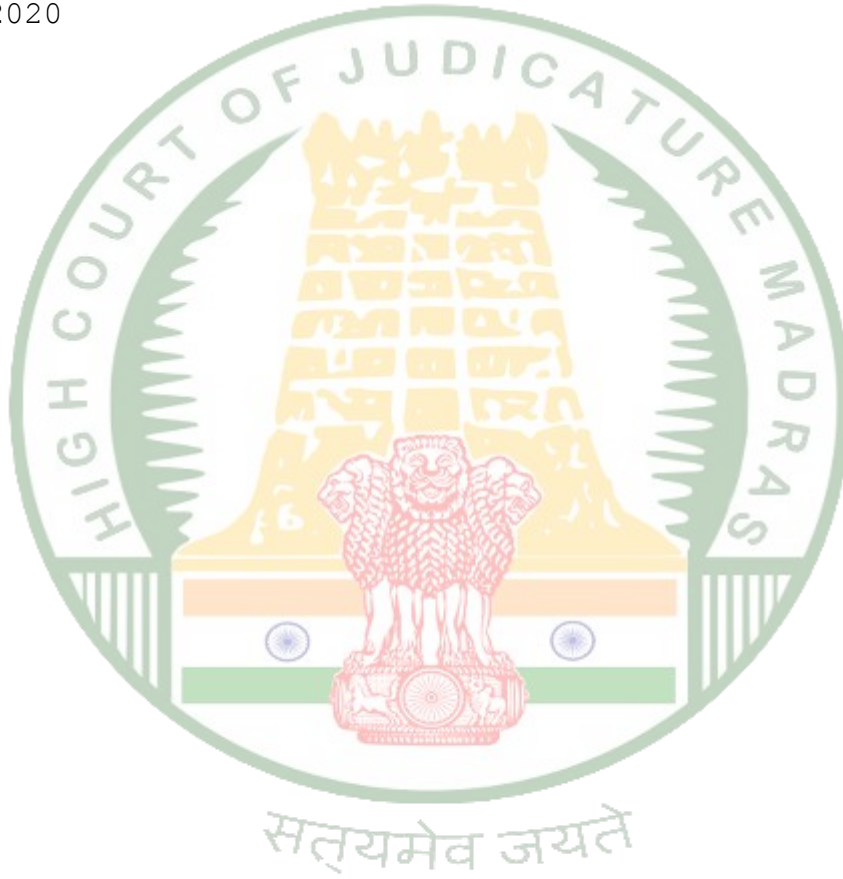
1. Motor Accident Claims Tribunal,
The Subordinate Court,
Dharapuram.

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

+1cc to Mrs.N.b.Surekha, Advocate, S.R.No.72383
+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.72648

C.M.A.No.2473 of 2009
and
M.P.No.1 of 2009

SR(CO)
CS/08/06/2020



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