

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.115 of 2015

and

M.P.No.1 of 2015

United India Insurance Co.Ltd.,
Divisional Office
No.2, Doctor Sankaran Road
Namakkal Town & Taluk Appellant/2nd Respondent

Vs.

1.S.P.Balasubramaniam1st Respondent/Petitioner

2.Thangarasu2nd Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.12.2013 made in MCOP No.244 of 2012 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Namakkal.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.Ma.P.Thangavel for R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,84,700/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 20.01.2012 at about 10.00 p.m. when the 1st respondent was riding his bicycle on the left hand side of the Namakkal - Salem Main Road, Namakkal. When he reached Namakkal Muthamizh Mandapam in front of Saranya Tea Shop, the Splendor Plus bike bearing Reg.No.TN-34-J-5652 belonging to the second respondent and insured with the appellant Insurance Company, came from

behind in a rash and negligent manner and dashed against the first respondent. Due to the said impact, the first respondent sustained grievous injuries. He filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,84,700/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But she submitted that since the rider of the motorcycle was not having the valid endorsement and effective driving licence at the time of accident, the Insurance Company is not liable to pay any compensation to the claimant. It is also submitted that 'Pay & Recover' direction cannot be passed in this case, since there is a clear-cut finding by the Tribunal that the rider of the motorcycle had no endorsement to drive the two-wheeler.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same 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 first respondent and perused the materials and evidence available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

8.The first respondent / claimant has been examined as P.W.1 before the Tribunal. He deposed before the Tribunal that only due to the rash and negligent riding of the rider of the two-wheeler in question, the accident had occurred, which version corroborates with Ex.P1- First Information Report. Considering the same and also taking note of Ex.P4-Charge Sheet and the evidence of P.W.2-Doctor, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle, which factual finding this Court is not inclined to interfere. But with regard to the point raised by the Insurance Company that the rider of the motorcycle was not possessing the valid driving licence to drive the motorcycle at the time of accident, the Tribunal, even

after coming to know that the rider was not having the valid driving licence to drive the motorcycle, held that the rider was having licence to drive light motor transport vehicle and being the insurer for the motorcycle, the Insurance Company is liable to pay the compensation to the claimant. This Court is unable to accept the said direction given by the Tribunal to the Insurance Company to pay compensation to the claimant. The Tribunal has accepted the contention of the Insurance Company that the rider of the motorcycle was not possessing the valid driving licence to drive the motorcycle at the time of accident. Having accepted the same, the Tribunal has simply ordered the Insurance Company to pay compensation to the claimant, only because the motorcycle was insured with them stating that the rider was having licence for light motor transport vehicle, which is not correct. In the circumstances, while confirming the quantum of compensation, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the first respondent / claimant and thereafter recover the same from the owner of the motorcycle /second respondent in accordance with law, as there was a breach of policy conditions on the part of the owner of the motorcycle by allowing a person to drive his motorcycle without proper driving licence to drive it.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle, the second respondent herein, for recovery of the compensation amount.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kas/km
To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Namakkal.

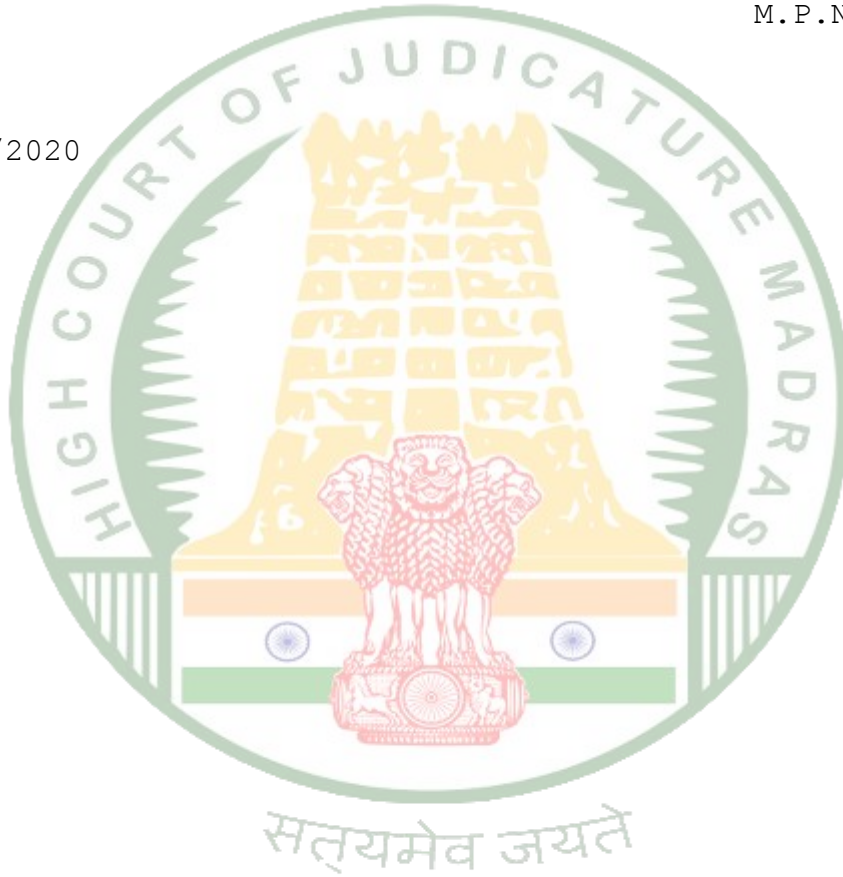
Copy to

The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.R.Sreevidhya, Advocate Sr.86274
+1cc to M/s.Ma.Pa.Thangavel, Advocate Sr.38539

C.M.A.No.115 of 2015
and
M.P.No.1 of 2015

rgn[co]
srg 20/11/2020



WEB COPY