

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1699 of 2011 and
M.P.No.1 of 2011

The Branch Manager,
M/s. ICICI Lombard General
Insurance Co. Ltd.,
Salem.

...Appellant/3rd Respondent

Vs.

1.N.Jaikumar
2.Loganathan
3.Thimmaiah

...1st Respondent/Claimant

4.The Branch Manager,
M/s. Bajaj Allianz General Insurance Co. Ltd.,
No.105-A/107-A, Cears Plaza,
136, Residency Road,
Bangalore - 560 025.

... 2,3,4 Respondents/Respondents 1,2,4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.09.2010, in M.C.O.P.No. 71 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Hosur.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.S.Arunkumar for R4

R1 - not ready in notice

R2 and R3 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the ICICI Lombard General Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 71 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Hosur. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

On 25.09.2006, at about 12.15 am, the injured was riding his motorcycle bearing Registration No. TN 24 X 0061 from Hosur to Sipcot on Hosur - Bangalore NH-7 National High way road. At that time, a Maruthi van bearing Registration No. KA 01 MB 5172, belonging to the third respondent herein, hit the said motorcycle, as a result of which, he fell down and sustained grievous injuries all over the body. According to the first respondent/claimant, the rash and negligent driving of the driver of the said Maruthi van was the cause of the accident, and that, since, the said Maruthi van was insured with the present appellant, both the owner of the said Maruthi van and the present appellant, are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

3. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,05,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the ICICI Lombard General Insurance Company have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the appellant would contend that the Tribunal without properly appraising the evidence available on record, concluded that the rash and negligence is on the part of the driver of the said Maruthi van. She would further contend that the quantum of compensation awarded by the Tribunal is also excessive.

5. Heard both sides and perused the materials available on record.

6. It is seen that the first respondent/claimant was travelling in a motorcycle bearing Registration No. TN 24 X 0061, while, the offending vehicle bearing Registration No. KA 01 MB 5172 came in a rash and negligent manner and dashed against the first respondent/claimant. After the accident, the first respondent/claimant took treatment in the Government Hospital, Hosur. Subsequently, he also took further treatment.

7. On going through the evidence of PW1 coupled with the FIR (Ex.P1) and the doctor certificate (Ex.P2), I find that the Tribunal has rightly come to the conclusion that the driver of the Maruthi van is at fault and the accident has taken place only due his rash and negligence. Therefore, the Tribunal is right in holding that the third respondent therein, is liable to pay compensation. A specific plea has been taken by the

Insurance Company before the Tribunal, that at the time of the accident, the driver of the offending vehicle did not possess any valid driving licence. However, in support of the same, no evidence has been adduced, therefore, the Tribunal has rejected the above plea of the Insurance Company.

8. After going through the documentary and oral evidence adduced before the Tribunal, this Court feels that the Insurance Company has not proved the alleged fact that at the time of the accident, the driver of the offending vehicle did not possess valid driving licence. In the absence of positive evidence, much less any evidence, the finding of the Tribunal cannot be interfered with. Accordingly, the order passed by the Tribunal, in this regard, is confirmed.

9. A perusal of deposition of PW2 shows that Dr.T.V.Gandhi has categorically stated that the left femur bone of N.Jaikuar (PW1) was broken and he underwent a surgery for the same. After the surgery, the bones have been malunited with angle of 3 degrees and now he is unable to sit or stand or walk. There is also a shortening of one inch in the right leg when compared to the left side. The doctor has assessed the partial permanent disability at 45% and the Tribunal has accordingly, awarded a sum of Rs.90,000/- towards partial permanent disability. The Tribunal has also awarded a sum of Rs.10,000/- and Rs.5,000/- towards 'pain and sufferings' and 'extra nourishment and transportation' respectively. The compensation of Rs.1,05,000/- awarded by the Tribunal cannot be said to be excessive, taking into consideration, the nature of the injuries sustained by the first respondent/claimant. In view of the above, the plea raised by the appellant stands negative.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant - ICICI Lombard General Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.1,05,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 71 of 2007, dated 27.09.2010, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Hosur within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

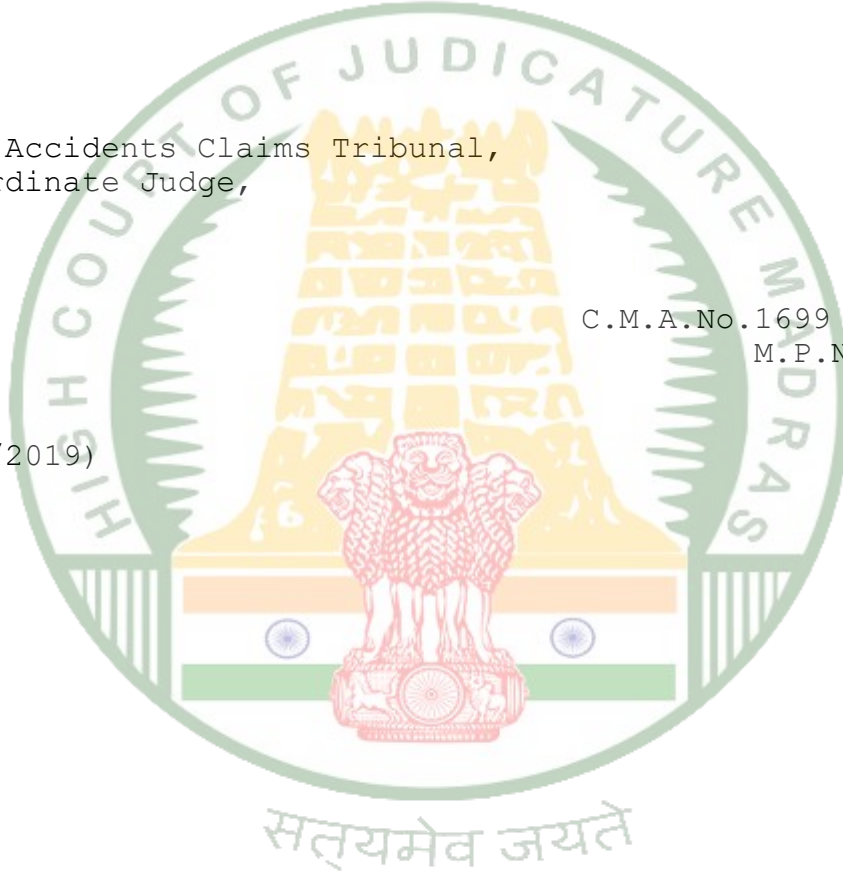
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To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Hosur.

C.M.A.No.1699 of 2011 and
M.P.No.1 of 2011

VBA (CO)
GMY (23/05/2019)



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