

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1873 of 2013

and

M.P.No.1 of 2013

The Manager,
M/s. United India Insurance Company Ltd.,
Anna Nagar,
Chennai - 600 040. Appellant/2nd Respondent

vs.

1.Thiru. R.SaravananIst Respondent/Petitioner

2.Thiru. A.V.Narendra Babu2nd Respondent/Respondent I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 10.08.2010 passed in MCOP.No.28 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur District.

For Appellant : Mr.J.Chandran

For Respondents : No appearance

J U D G M E N T

The appellant, United India Insurance Company Limited, is the second respondent in MCOP.No.28 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur District. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident on 29.06.2008.

2. The case of the claimant is that on 29.06.2008, he was walking along Chennai - Thirumangalam 200 feet road and at about 11.30 p.m, a speeding motorcycle bearing Registration No.TN 05 X 4631, hit him, as a result of which, he fell down and sustained injuries all over his body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No.TN 05 X 4631, belonging to the second respondent was the cause of the accident and that since the said motorcycle was insured with the present appellant, United India Insurance Company Limited both of them are jointly and severally liable to pay compensation.

4. The second respondent / owner of the motorcycle remained absent before the Tribunal and therefore, he was set ex-parte. The appellant contested the claim petition. The learned Chief Judicial Magistrate, Thiruvallur District after analysing the evidence on record, awarded a compensation of Rs.60,000/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the appellant, United India Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.J.Chandran, learned counsel appearing for the appellant / claimant would contend that the rider of the two wheeler was under the influence of alcohol and therefore the Insurance Company cannot be held liable to pay compensation. He further contended that the Award passed by the Tribunal is on the higher side.

6. No appearance on behalf of the respondents.

7. It is pertinent to point out that no evidence was adduced on the side of the appellant that the rider of the two wheeler was under the influence of alcohol, while riding his two wheeler. Therefore, the insurer cannot avoid its liability to pay compensation. A copy of the FIR (Ex.P1) shows that the rider of the two wheeler was rash and negligent and therefore, the negligence fixed on the part of the rider of the two wheeler by the Tribunal cannot be found fault with. Dr.Thiyagarajan (PW2) had assessed the partial permanent disability as 45% and the Tribunal after considering the nature of injuries had awarded a sum of Rs.60,000/- to the claimant.

8. By no stretch of imagination, the award passed by the Tribunal can be said to be on the higher side and therefore, I do not find any merits in the arguments advanced by the learned counsel appearing for the appellant.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) Both the appellant, United India Insurance Company Limited as well as the second respondent are directed to deposit the compensation amount i.e., Rs.60,000/- (less the amount already deposited) jointly and severally, 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 MCOP.No.28 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvallur District within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

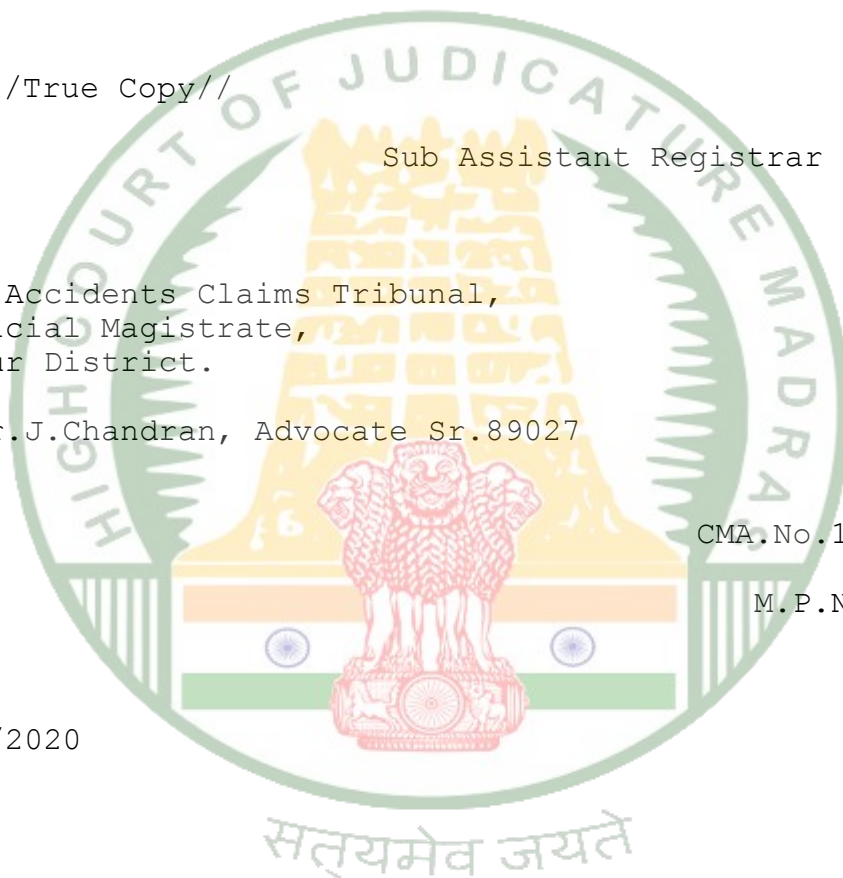
To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Thiruvallur District.

+1cc to Mr.J.Chandran, Advocate Sr.89027

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srg 15/04/2020



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