

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2659 of 2011

and

M.P.No.1 of 2011

M/s.Iffco Tokyo General Insurance Co.Ltd.,
No.195, T.V.Samy Road,
(west) R.S.Puram,
Coimbatore - 641 002 ... Appellant /3rd Respondent

Vs.

1.Jesintha ... 1st Respondent/Petitioner
2.R.Karuppusamy
3.C.Maheswaran ... Respondents 2 & 3/Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.01.2010 made in M.C.O.P.No.735 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.1, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.Ma.P.Thangavel

For R2&R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 25.01.2010 made in M.C.O.P.No.735 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.1, Coimbatore.

2. The facts of the case as per claim petition is that on 28.04.2008 at about 8.00 p.m, the claimant was walking on the Palghat road and trying to cross the road from West to East direction. At that time, all of a sudden there came a Motor cycle bearing Registration No.TN 37 AU 7322 from North to South direction in a rash and negligent manner and dashed against the claimant. Due to which, the claimant fell down and sustained severe injuries.

consideration the oral and documentary evidence, awarded a compensation of Rs.1,28,800/- with interest at 6% per annum.

4. Heard both sides.

5. In support of the same, P.W.1 and P.W.2 were examined and marked Exhibits A1 to A11 were marked and R.W.1 and R.W.2 were examined and Exhibit R1 was marked and Exhibits X1 and X2 were marked through Court's side witness.

6. Before the Tribunal, the third respondent/Insurance Company has taken a specific stand that the driver of the offending vehicle had licence only for four wheeler at the time of accident. While, the said person was driving two wheeler and as such, he has not having any valid driving licence to drive two wheeler. However, the Tribunal has taken note of Exhibit A2 wherein, the Tribunal has held that at the time of the accident, he was having a valid licence and hence, rejected the said plea for the Insurance Company and held that the owner of the two wheeler as well as the Insurance Company are jointly and severally liable to pay the compensation and also arrived at compensation to the claimant and relied upon the rulings 2008 (3) TNLJ 215 (Civil) (Madurai Bench of Madras (end of the 8th page in the original, High Court)

"Oriental Insurance Company Ltd., Vs. Amma Ponnú and others "Motor Vehicles Act 1988 - The claimant injured in road accident and was awarded compensation of Rs.32,000/- on appeal by the Insurance Company, the High Court held that the claimant has to prove that there was valid driving licence to drive the motor cycle driver not having licence to ride motor cycle on the date of accident, the Insurance Company is exonerated from its liability - appeal by Insurance Company allowed".

2. AIR 2002 NOC 161 (HP) The New India Assurance Company Ltd., Vs. Premlatha and others. "Motor Vehicle Rules (1989), Rr.14,15,17 - Driving licence for light motor vehicle - Does not include licence for motor cycle or scooter without there being any endorsement in this regard - for which endorsement the licence holder has to apply as proved under S.11-

3. 2008 ACJ 1307 (SC) Sardari Vs. Sushil Kumar.

"Tractor hit a tonga and tonga driver sustained fatal injuries - Tractor driver admitted that he had no licence to drive a tractor - concurrent finding of High Court and the Tribunal that driver of Tractor had no licence and High Court held that the claimants are entitled to compensation from driver and owner of the vehicle.

7. Aggrieved by the Judgment and Decree passed by the learned Additional District Judge, Coimbatore, the Insurance Company has preferred this appeal.

8. After hearing the respective parties and also after perusing Exhibits R1 and R2 xerox copy of the Motor Vehicle's Inspector Report and as well as the driving licence R.Karupasamy, and R.W.2 S.Shyamala, Assistant, R.T.O. officer, on witness summon, taken at the instance of the Insurance Company, had categorically stated that as per Exhibits X1 and X2, the driver of the offending vehicle was authorized to drive Light Motor Vehicle from 28.01.04 and he was given licence to drive Motor vehicle (two wheeler) from 9.03.09.

9. Admittedly, in the instant case, the accident has taken place on 28.04.2008 which goes to show that on the date of the accident viz 28.04.2008, the driver of the offending two wheeler does not possess valid and effective licence to drive the two wheeler and accordingly, there is breach of policy condition and following the settled proposition of law that the Insurance Company shall pay and recover the compensation award amount from the owner of the vehicle.

10. After going through the heads of quantum arrived at by the Tribunal and also the quantum awarded by the Tribunal being Rs.1,28,800/- for the injuries sustained by the claimant and that there was a fracture on the right leg and use of his leg has become restricted and there was a mal-union and P.W.2 Doctor has assessed the liability at 28% and based upon the same, the Tribunal has rightly arrived at the compensation and quantum of compensation awarded by the Tribunal under various heads is confirmed.

11. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall deposit the balance amount if any within a period of eight weeks from the date of receipt of a copy of this judgment.

12. In fine, this Civil Miscellaneous Appeal is partly allowed to the limit of pay and recovery of award amount and on all other facts viz quantum of compensation, the plea is stands rejected. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Fast Track Court No.1,
Coimbatore.

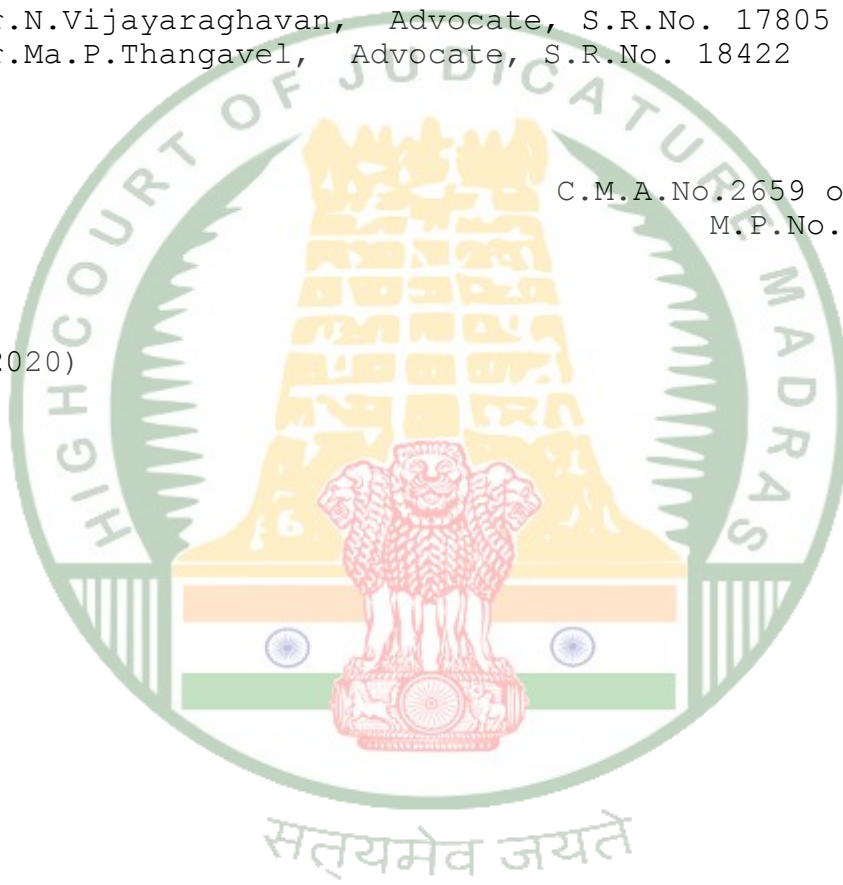
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 17805

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 18422

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PP (CO)
GN(12/03/2020)



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