

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3101 of 2011 and
M.P.No.1 of 2011

The National Insurance Co. Ltd.,
B.O II, 1272-1273, Pallaniappan Complex,
Mettur road, Erode - 638 011.

...Appellant/Respondent-2

Vs.

1.P.Shanmugam

... R1/Petitioner

2.Hemanth Kumar

... R2/R1

3.M.Meena

... R3/R2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.03.2011, in M.C.O.P.No. 382 of 2008, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Erode.

For Appellant : Mr.G.Udaya Sankar

For Respondents: Mr.D.Selvaraju for R1

Mr.N.Santhose for R2

Mr.S.Kaithamalai Kumaran for R3

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 382 of 2008, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Erode. They have filed the present appeal questioning both the liability to pay compensation and the quantum of compensation awarded by the Tribunal.

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

(i) The first respondent/claimant was aged 42 years, on the date of the accident. He was working as a bus conductor in Tamil Nadu State Transport Corporation, Erode. In addition to

that, he was also doing agriculture. The monthly income of the first respondent/claimant is Rs.13,000/-.

(ii) On 15.07.2008, at about 10.15 pm, the first respondent/claimant was walking on the Nachiappa street at Erode town from north to south. At that time, the second respondent herein was riding a motorcycle bearing Registration No. TN 33 AA 9979, belonging to the third respondent herein, in a rash and negligent manner and hit against the first respondent/claimant, as a result of which, the first respondent/claimant sustained grievous injuries all over his body. He also sustained bone fracture in three places of his right leg. Further, he sustained other injuries on his nose, left leg and right shoulder. The operations were done on his right leg by fixing plates and screws. Due to the injuries sustained by him, he became a disabled person and he could not do his work as before.

(iii) According to the first respondent/claimant, the rash and negligent riding of the rider of the said motorcycle belonging to the third respondent herein, was the cause of the accident, and that, since, the motorcycle was insured with the National Insurance Company Limited, the driver, the owner and the insurer of the said motorcycle are jointly and severally liable to pay compensation of Rs.2,00,000/- to him.

3. The driver, the owner of the said motorcycle and the National Insurance Company Limited contested the claim petition. A perusal of the orders passed by the Tribunal clearly shows that, the Insurance Company has taken a specific plea before the Tribunal that, at the time of the accident, the driver of the motorcycle bearing Registration No. TN 33 AA 9979, the second respondent herein, did not possess valid driving licence to drive the said vehicle, and therefore, the owner of the said vehicle violated the terms and conditions of policy of Insurance Company. Hence, the third respondent is not entitled to be indemnified under the policy. The Insurance Company also disputed the age, the avocation and the monthly income of the first respondent/claimant before the Tribunal and contended that the quantum of compensation claimed by the first respondent/claimant is highly excessive.

4. Before the Tribunal, the injured was examined as PW1 and the doctor who treated the injured was examined as PW2 and exhibits A1 to A16 were marked. On behalf of the Insurance Company, an assistant from the office of the Insurance Company was examined as RW1 and also the Policy of the Insurance Company is marked as Ex.B1, whereas, a copy of the legal notice sent from the Insurance Company calling upon the driver and the owner of the said motorcycle to produce the driving licence was marked

as Ex.B2 and the same is acknowledged under the exhibits B3 and B4.

5. Taking into consideration the oral and documentary evidence adduced before the Tribunal, the Tribunal has held that the accident has taken place only due to the rash and negligent driving of the driver of the said motorcycle. The Tribunal has also held that the injured is a third party claimant, walking as a pedestrian, on the road, and since, the driver of the said motorcycle did not have valid driving licence on the date of the accident, awarded a compensation of Rs.1,46,000/- together with interest at the rate of 7.5% per annum and directed the Insurance Company to 'pay' the compensation to the first respondent/claimant and then 'recover' the same from the owner of the said motorcycle in the manner known to law. Aggrieved against the said finding given by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 alleging that the Insurance Company has to be exonerated from its liability to pay compensation to the first respondent/claimant and also the quantum of compensation awarded by the Tribunal is on the higher side.

6. After hearing both the parties, and taking note of the finding given by the Tribunal that, the pedestrian who was knocked down by the vehicle driven by the second respondent herein, is a third party, whose risk was to be covered by the insurer. Therefore, since, the rider of the motorcycle did not have valid driving licence, on the date of the accident, the Tribunal invoked the principles of 'pay and recovery', and accordingly, ordered 'pay and recovery'. This court is of the considered view that, the orders passed by the Tribunal directing the Insurance Company to 'pay' the compensation to the first respondent/claimant and then 'recover' the same from the owner of the motorcycle bearing Registration No. TN 33 AA 9979, does not suffer from any irregularity or illegality and therefore, the same is hereby confirmed.

7. Quantum of compensation: The Tribunal after considering the pay certificate (Ex.A15), fixed the income of the injured as Rs.8,800/- per month. Dr.K.Periyasamy (PW2), has assessed the permanent disability suffered by the injured as 22%, and the Tribunal after going through the wound certificate (Ex.A4), discharge summary (Ex.A11), X-rays (Exs.A12 & A14) and disability certificate (A13), taken up the permanent disability as 22%, as assessed by the Dr.K.Periyasamy (PW2) and granted Rs.2,000/- per percentage of disability. Therefore, a sum of Rs.44,000/- was awarded towards 'permanent disability' and the same does not need any interference and it is hereby confirmed. Since, the first respondent/claimant was not able to attend to

work for about 106 days, as evident from Ex.A16, the Tribunal has awarded a sum of Rs.30,000/- towards 'loss of income' and the same is also confirmed. On going through the compensation awarded under the various other heads, this court feels that the same is just and reasonable compensation for the injuries sustained by the first respondent/claimant, who has been working as a conductor in Tamil Nadu State Transport Corporation. Accordingly, the quantum of the compensation awarded by the Tribunal is hereby confirmed.

8. It is brought to the notice of this Court by the learned counsel appearing for the appellant that, the present appeal was not admitted and it is only in the notice of motion stage and the same is also evident from the docket sheet orders of this appeal.

9. In the result,

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

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

(iii) The appellant - Insurance Company is directed to deposited the entire amount awarded by the Tribunal i.e., Rs.1,46,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 382 of 2008, dated 01.03.2011, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Erode within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The first respondent/claimant is permitted to withdraw the same, in the manner known to law.

WEB COPY
Sd/-
Assistant Registrar(CS V)
//True Copy//

Sub Assistant Registrar

mbi

To

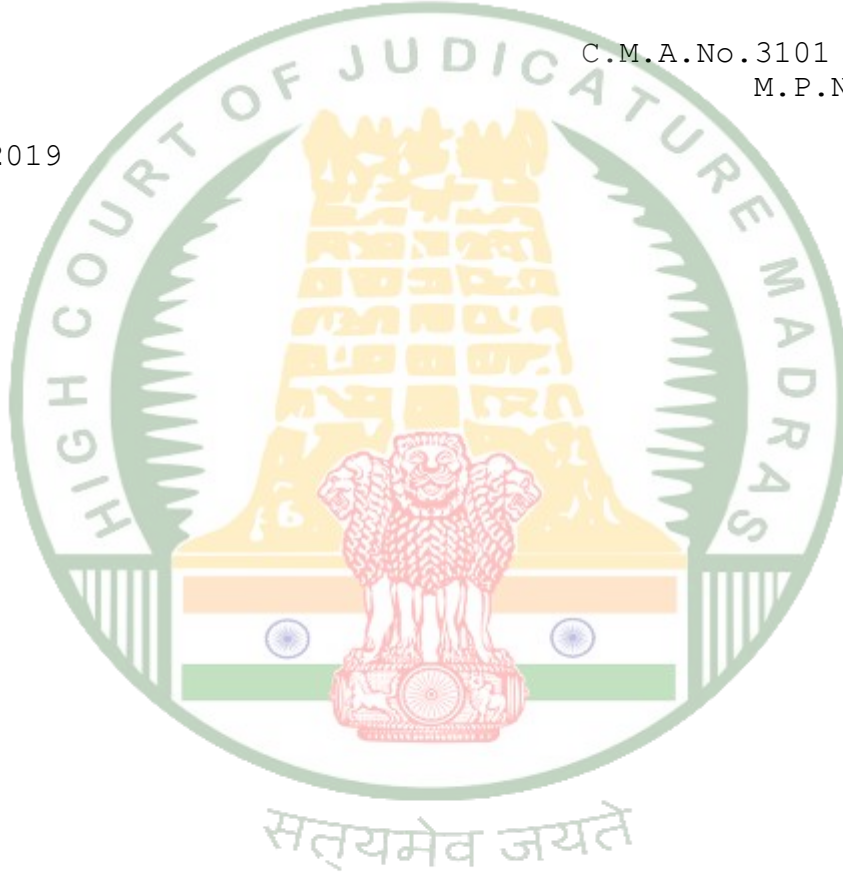
1.The Motor Accidents Claims Tribunal,
The I Additional Subordinate Judge,
Erode.

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

+1cc to Mr.G.Udaya Sankar, Advocate sr.20805

C.M.A.No.3101 of 2011 and
M.P.No.1 of 2011

nr 01/10/2019



WEB COPY