

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2541 of 2015

National Insurance Company Ltd.,
No.9, Pulla Avenue
Shenoy Nagar
Chennai - 29.

.. Appellant/2nd Respondent

Vs.

1.N.Murugan

2.R.Gayathri

.. Respondents/Claimants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 08.01.2014 made in O.P.No.1033 of 2011 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Tiruvallur at Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.P.Natarajan for R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant against the award and decree dated 08.01.2014 made in O.P.No.1033 of 2011 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Tiruvallur at Poonamallee.

2.The learned counsel for the appellant contended that the driver of the vehicle belonging to the 2nd respondent did not possess valid driving license, at the time of accident. In the absence of valid and effective driving license, the question of liability on the Insurance Company does not arise. Further, owner of the vehicle willfully violated the policy condition by allowing a person to drive the vehicle without driving license.

The Tribunal ought to have held that the 1st respondent is entitled for compensation only from the 2nd respondent. P.W.2-Doctor has issued disability certificate without conducting necessary examination and disability assessed by the P.W.2, Doctor is highly exaggerated. Further, the Tribunal failed to note that the 1st respondent, after initial period of treatment, did not take any subsequent or continuous treatment. Therefore, the amounts awarded by the Tribunal are excessive and prayed for setting aside the same.

3.The learned counsel for the 1st respondent contended that the driver of the vehicle belonging to the 2nd respondent has produced driving license before the Motor Vehicle Inspector at the time of inspection and it has been mentioned in the Motor Vehicle Inspector's report, marked as Ex.P.4. P.W.2-Doctor considering the nature of injuries has given Disability Certificate after assessing the 1st respondent. Therefore, amounts awarded by the Tribunal are not excessive and prayed for dismissal of this Civil Miscellaneous Appeal.

4.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

5.The main contention of the appellant is that the driver of the vehicle belonging to the 2nd respondent did not possess valid and effective driving license. Further, the appellant has not let in any evidence to substantiate this contention except marking Exs.R1 and R2. On the other hand, the 1st respondent marked Ex.P4, Motor Vehicle Inspector's report, with regard to the vehicle belonging to 2nd respondent. In Ex.P.4, it has been mentioned that the driver of the vehicle belonging to the 2nd respondent has produced driving license, which clearly proves that the driver of the vehicle had valid and effective driving license, at the time of accident. The Tribunal considered Ex.P4, Motor Vehicle Inspector's report and held that the driver had valid and effective driving license. In view of the same, there is no error warranting interference by this Court. As far as the quantum of compensation is concerned, the 1st respondent examined P.W.2, Doctor, who certified that the 1st respondent suffered 35% of disability. The Tribunal reduced the same by 5% and awarded a sum of Rs.60,000/- for 30% disability at the rate of Rs.2,000/- per percentage of disability. Hence, amounts awarded by the Tribunal as compensation under different heads are not excessive.

6.In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The learned counsel for the appellant submitted that they had already deposited the award amount together with interest. Hence, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The II Additional District Court,
Motor Accidents Claims Tribunal,
Tiruvallur at Poonamallee.

Copy to

The Record Keeper
VR Section, High Court, Madras 104.

+1 CC to Mr.D.Bhaskaran, Advocate sr 5996.

C.M.A.No.2541 of 2015

GJII(CO)
SP(08/06/2019)

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