

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3558 of 2011

J.Priya

...Appellant / Claimant

Vs.

1. M.Munna Basha

2. The Divisional Manager,
United India Insurance Company Limited,
Katpadi road,
Vellore - 4. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.01.2011, in M.C.O.P.No. 83 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Ms.R.Rathna Thara for R2
R1 - Not ready in notice

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 83 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore. She has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident.

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

(i) The appellant/claimant has been working as a Lecturer in National Institute of Technology at Bangalore, earning a sum of Rs.20,000/- per month.

(ii) On 19.03.2007, at about 04.45 pm, the appellant/claimant was travelling in auto-rickshaw bearing

Registration No. TN 23 V 8714 from her house in order to go to Katpadi Railway Station, whileso, near River View Hotel, Katpadi to Vellore main road, the driver of the said auto-rickshaw drove the vehicle in a rash and negligent manner and due to that, the vehicle capsized. In the said impact, the appellant/claimant sustained fracture on her right hand and she was immediately taken to CMC Hospital for treatment.

3. The owner of the said auto-rickshaw remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. On behalf of the appellant/claimant, PW1 and PW2 were examined and Exs. P1 to P9 were marked. On behalf of the Insurance Company, an Assistant from the Regional Transport Office was examined as RW1 and Ex.R1 was marked. Based upon the oral and documentary evidence, the Tribunal has held that the accident happened due to the rash and negligent driving of the driver of the said auto-rickshaw and also held that both the owner and the insurer of the auto-rickshaw are jointly and severally liable to pay compensation of Rs.1,05,500/- to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

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

5. It is evident from the records that the manner of the accident and the rash and negligence on the part of the driver of the said auto-rickshaw is not in dispute, and hence, the same is hereby confirmed. On the question of liability, it is seen that, at the time of the accident, the driver of the auto-rickshaw has possessed valid driving licence to drive 'light motor vehicle'. However, taking into consideration, the auto-rickshaw is a public career and the driver does not possess badge, at the time of the accident, the Tribunal has held that it amounts to breach of policy condition and therefore, exonerated the Insurance Company from its liability.

6. The possession of endorsement or badge in driving licence is no longer res integra, in view of the Judgment pronounced by the Apex Court, in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been held that once a licence is issued to drive 'Light Motor Vehicle', it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. Admittedly, the auto-rickshaw in the present case is below the prescribed weight and accordingly, in view of the above

decision, this Court holds that there is no want of badge for the 'light motor vehicle' licence. Therefore, it does not amount to breach of policy condition. Accordingly, the finding rendered by the court below is hereby set aside and the owner and the insurer of the auto-rickshaw are held liable to pay compensation to the appellant/claimant.

7. Taking into consideration that the year of the accident is 2007, a sum of Rs.2,000/- per percentage of disability is fixed and accordingly, the compensation towards the 'permanent disability' is arrived at $35\% \times \text{Rs.2,000/-} = \text{Rs.70,000/-}$. A sum of Rs.35,000/- awarded under the head 'pain and sufferings' is hereby confirmed. The Tribunal after taking into consideration, the medical bills (Ex.P3), has awarded a sum of Rs.35,500/- towards the 'medical expenses' and the same is also confirmed. The Tribunal has not awarded any amount under the heads 'extra nourishment', 'transportation' and 'attender's charges' and therefore, a sum of Rs.10,000/-, Rs.10,000/- and Rs.7,000/- is awarded respectively. The appellant/claimant is also entitled to a sum of Rs.5,000/- towards 'loss of amenities'.

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 83 of 2009 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Permanent disability	Rs.35,000/-	Rs.70,000/-
2.	Pain and sufferings	Rs.35,000/-	Rs.35,000/-
3.	Medical expenses	Rs.35,500/-	Rs.35,500/-
4.	Extra nourishment	NIL	Rs.10,000 /-
5.	Transportation	NIL	Rs.10,000 /-
6.	Attender's charges	NIL	Rs.7,000/-
7.	Loss of amenities	NIL	Rs.5,000/-
	Total	Rs.1,05,500/-	Rs.1,72,500/-

The compensation awarded by the Tribunal is enhanced from Rs.1,05,500/- to Rs. 1,72,500/- which shall carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,05,500/- to Rs.1,72,500/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The order of the Tribunal directing the owner of the auto-rickshaw bearing Registration No. TN 23 V 8714 to pay compensation to the appellant/claimant is set aside.

(v) The second respondent - United India Insurance Company Limited is directed to deposit the entire compensation of Rs.1,72,500/- (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 and proportionate costs to the credit of M.C.O.P.No. 83 of 2009, dated 28.01.2011, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore within a period of eight weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the appellant/claimant is permitted to withdraw the entire compensation awarded to them, after following due process of law.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

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Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court,
Vellore.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.V.Jagannathan, Advocate, S.R.No.20106
+1 cc to Ms.R.Rathna Thara, Advocate, S.R.No.20173

C.M.A.No.3558 of 2011

SV(CO)
SSM(09/05/2019)