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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2660 of 2012

Gurvayammal

...Appellant/Petitioner

vs.

1.Ayyanar

2.S.Suganthi

3.National Insurance Co. Ltd.,
Opp. Bus Stand, 81-D, Chetty Street,
Tiruchengode,
Namakkal District.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.01.2009 passed in MCOP.No.159 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No-I, Erode.

For Appellant : Mr.MA.P.Thangavel

For Respondents : Mr.S.Arunkumar for R3

No appearance for R1 and R2

J U D G M E N T

The appellant is the claimant in MCOP.No.159 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No-I, Erode. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,20,000/- for the injuries sustained by her in a road accident on 19.12.2006.

2. The case of the claimant in nutshell is as follows:

On 19.12.2006, the claimant was walking along Sakthi road, Sulai Bharathi nagar and at about 04.00 pm, a motorcycle bearing Registration No. TN 34 B 1617, belonging to the second respondent, hit her, as a result of which, she sustained injuries all over her body. According to the claimant, the rash



and negligent riding of the rider of the motorcycle bearing Registration No. TN 34 B 1617, belonging to the second respondent, was the cause of the accident and that since the said motorcycle was insured with the National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The respondents 1 and 2 (rider and owner of the motorcycle respectively) remained absent before the Tribunal and therefore, they were set exparte. The National Insurance Company contested the claim petition. The learned Judge, Fast Track Court-I / Motor Accident Claims Tribunal, Erode after analysing the evidence on record, awarded a compensation of Rs.50,700/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal however exonerated the Insurance Company from paying compensation to the claimant, since the rider of the motorcycle bearing Registration No. TN 34 B 1617, did not possess a valid driving licence on the date of the accident. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.MA.P.Thangavel, learned counsel appearing for the appellant/ claimant contended that as per the settled legal principles of law, in the absence of a valid driving licence, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle. He also contended that the Tribunal has awarded very meagre amount towards "permanent disability" and no amounts were awarded towards "attender's charges" and "damage to clothes". He therefore prayed for enhancement of compensation.

5. Heard Mr.S.Arunkumar, learned counsel appearing for the third respondent. No appearance for the respondents 1 and 2.

6. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).



7. In the facts and circumstances of the present case, the orders passed by the Tribunal exonerating the Insurance Company from paying the award amount is liable to be set aside. Therefore, the National Insurance Company is directed to pay the award amount to the claimant in the first instance and then recover the same from the owner of the motorcycle.

8. Dr.S.M.Duraisamy (PW2) had assessed the partial permanent disability as 20% and the Tribunal had awarded a sum of Rs.20,000/- towards "permanent disability". The accident took place in the year 2006 and therefore this Court is of the opinion that awarding a sum of Rs.2,000/- per percentage of disability would meet the ends of justice. The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Medical Bills	Rs.8,700/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
Total		Rs.71,200/-

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.50,700/- to Rs.71,200/-.

(iii) The third respondent / National Insurance Company is directed to deposit the enhanced compensation awarded by this Court i.e., Rs.71,200/- 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.159 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No-I, Erode within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 34 B 1617 on the same cause of action.



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(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The Additional District Judge
The Motor Accidents Claims Tribunal,
The Fast Track Court-I,
Erode.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.MA.P.Thangavel, Advocate sr 89749.

CMA.No.2660 of 2012

VGII(CO)
SP(25/08/2021)