

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.No.892 of 2011 and
M.P.Nos.1 and 2 of 2011

The United India Insurance Co. Ltd.,
Branch Office No.II,
No.77, A.A.Street,
Oriental Theatre Complex,
Salem - 636 001.

...Appellant/2nd Respondent

Vs.

1.R.Murugan ... 1st Respondent/Petitioner

2.C.Chinnathambi ...2nd Respondent/1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.09.2010, in M.C.O.P.No. 1090 of 2005 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Salem.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.E.Durai Vaiyapuri
for Mr.N.Manokaran
for R1

No appearance for R2 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 1090 of 2005, on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Salem.

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

On 02.05.2005, at about 03.00 pm, the injured was proceeding from Erumaipatti bus stop to his tea stall at Mecheri-Thoppur main road. At that time, a motorcycle bearing Registration No. TN 29 H 1440, belonging to the second respondent herein, hit him, as a result of which, he sustained grievous injuries. Immediately, the first respondent/ claimant was taken to Mecheri Private Hospital for first aid and then to Sri Gokulam Hospital, Salem and finally he was admitted at Kurinji Hospital, Salem. According to the first respondent/claimant, the rash and negligent riding of the rider of the said motorcycle was the cause of the accident, and that, since, the said motorcycle was insured with the present appellant, both the owner of the said motorcycle and the present appellant, are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

3. The owner of the said motorcycle was absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,85,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the United India Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.T.Ravichandran, learned counsel appearing for the appellant contended that though a specific plea was raised in the counter statement filed before the Tribunal that the rider of the motorcycle has not produced the driving licence, the Tribunal has not properly adjudicated on that point, and wrongly fixed the liability on the present appellant. Therefore, the learned counsel prayed that pay and recovery may be ordered.

5. Per contra, Mr.E.Durai Vaiyapuri, learned counsel appearing for the first respondent/claimant would contend that the Tribunal after considering various aspects, awarded a just compensation and the same need not be disturbed at this juncture.

6. The manner of the accident is not disputed by both the parties. After hearing the rival submissions, I find that the finding of the Tribunal that the accident took place due to the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 29 H 1440 is just and proper.

7. The learned counsel appearing for the appellant submitted that the first respondent/claimant failed to produce his driving licence. He also drew my attention to the

deposition of V.Srinivasan (RW1) who is working as an Assistant Manager in the present appellant's Company, Letter sent to the claimant by the Insurance Company (Ex.R2) and Legal notice sent to the claimant by the counsel (Ex.R3). The learned counsel appearing for the appellant further submitted that the Insurance Company has taken all efforts to get the details of the driving licence, however, the same cannot be produced before the Court. However, a perusal of Ex.R4 shows that both the letter and notice (Exs.R2 and R3) have been returned. It appears that though the Insurance Company has called upon the owner of the vehicle, to furnish the details of the driving licence, the owner of the said motorcycle has evaded and has not given any reply. The same plea seems to have been taken before the Tribunal and the Tribunal after considering all aspects observed that the burden to prove the breach of the contract of Insurance was on the Insurance Company and therefore, adverse inference cannot be drawn against the first respondent/claimant.

8. In the absence of any positive evidence to prove that the first respondent/claimant was not in possession of the driving licence on the date of the accident, this Court feels that the finding of the tribunal does not suffer from any irregularity or illegality. The finding of the Tribunal that the Insurance Company is liable to pay compensation to the first respondent/claimant cannot be faulted with.

9. As far as the quantum of compensation is concerned, I do not find it to be on the higher side and therefore, the same is upheld.

10. In the result,

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

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

(iii) The present appellant - United India Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.1,85,000/- (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 to the credit of M.C.O.P.No. 1090 of 2005, on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Salem within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

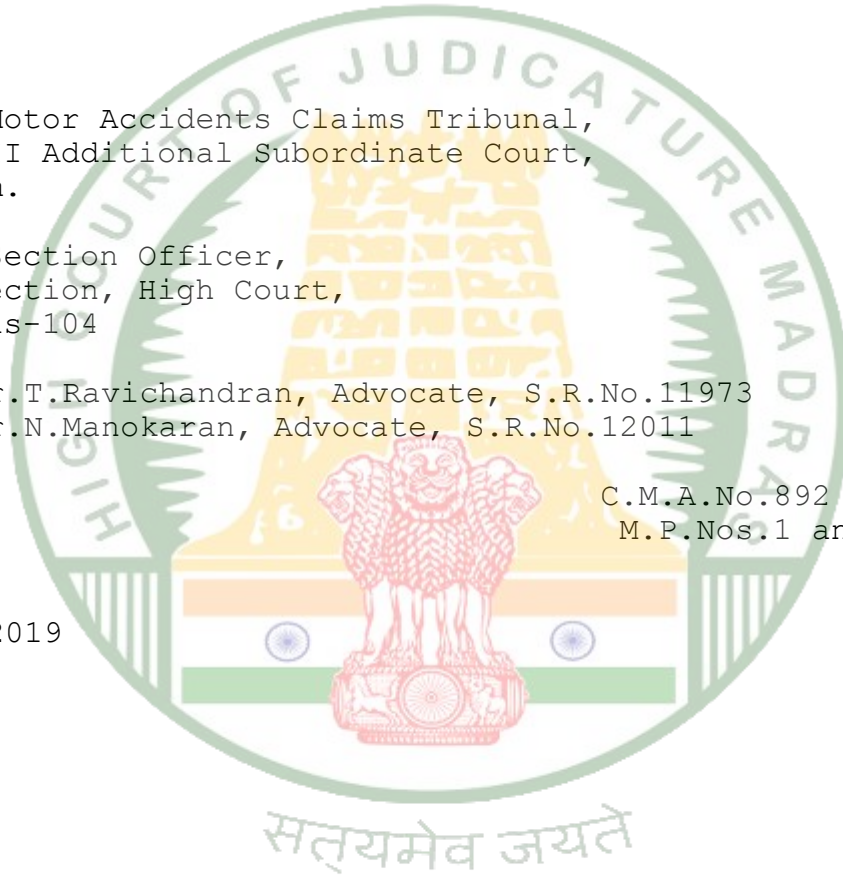
1. The Motor Accidents Claims Tribunal,
The II Additional Subordinate Court,
Salem.
2. The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.11973

+1cc to Mr.N.Manokaran, Advocate, S.R.No.12011

C.M.A.No.892 of 2011 and
M.P.Nos.1 and 2 of 2011

CNR(CO)
CS/09/05/2019



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