

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1888 to 1890 of 2016
and C.M.P.Nos.13867 to 13869 of 2016

The Oriental Insurance Co.Ltd.
3-L, Siddha Veerappa Chetti Street
Dharmapuri. Appellant in all appeals

Vs

Madhammal 1st respondent in C.M.A.No.
1888 of 2016
Gangammal 1st respondent in C.M.A.No.
1889 of 2016
Kamala @ Kamalammal 1st respondent in C.M.A.No.
1890 of 2016
V.Chitrarasu 2nd respondent in all appeals

C.M.A.No.1888 of 2016 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.09.2013 made in MACTOP No.1140 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Krishnagiri.

C.M.A.No.1889 of 2016 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.09.2013 made in MACTOP No.1141 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Krishnagiri.

C.M.A.No.1890 of 2016 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.09.2013 made in MACTOP No.158 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
in all appeals

For Respondents : No appearance
in all appeals

COMMON JUDGMENT

The case in brief, is as follows:

On 12.09.2009 at about 10.30 a.m., the first respondents in these appeals were walking on the left side of the Tiruvannamalai - Bangalore Road. When they were nearing Andheripatti Ravi lands, the motorcycle bearing Reg.No.TN-29-AX-1288, belonging to the second respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and dashed against them. Due to the said impact, they sustained injuries. They filed claim petitions before the Tribunal claiming compensation for the injuries sustained. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.13,000/- each to the claimants in CMA Nos.1888 of 2016 and 1889 of 2016 and a total compensation of Rs.1,45,800/- to the claimant in C.M.A.No.1890 of 2016, with interest at the rate of 7.5% per annum from the respective dates of petitions.

2.Challenging the same, these Civil Miscellaneous Appeal have been filed by the Insurance Company.

3.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. He mainly emphasised that the Tribunal has erred in directing the Insurance Company to pay the compensation, since the fact remained that the rider of the motorcycle was not possessing the valid driving licence at the relevant point of time. He further submitted that the Tribunal at least ought to have given liberty to the Insurance Company to recover the compensation from the owner of the vehicle, after making payment to the claimants.

4.There is no representation on behalf of the respondents, even though their names have been printed in the cause list.

5.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

6.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle and the said finding is not disputed by

both sides. With regard to non-possession of valid driving licence by the rider of the motorcycle, it was put forth on behalf of the Insurance Company before the Tribunal that the rider of the motorcycle was not possessing the valid driving licence on the date of accident. But, while taking a decision as to who has to pay compensation to the claimants, the Tribunal has not taken note of the point raised on behalf of the Insurance Company in respect of non-possession of valid driving licence by the rider of the motorcycle, and directly proceeded to order the Insurance Company to pay compensation to the claimants, stating that since the appellant Insurance Company is the insured for the two-wheeler, the Insurance Company has to pay the compensation, for the negligence on the part of the rider of the motorcycle. On 16.09.2016, when these appeals were taken up by this Court, this Court has granted conditional stay, in view of the contentions raised on behalf of the Insurance Company that when the licence was issued in the name of the second respondent herein for riding the Yamaha Cruz Motorcycle bearing Reg.No.TN-29-AX-1288, the said motorcycle was driven by one Anumandhan, S/o.Raman. Even though the names of the first respondent / claimants and the second respondent / owner of the two-wheeler, have been printed in the cause list, none appeared on their behalf, today before this Court.

7.In these circumstances, while confirming the quantum of compensation awarded by the Tribunal in all these cases, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, the second respondent herein, in accordance with law.

8.The Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

9.The appellant Insurance Company is directed to deposit the compensation amounts with interest, as ordered by the Tribunal, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent in these appeals / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To

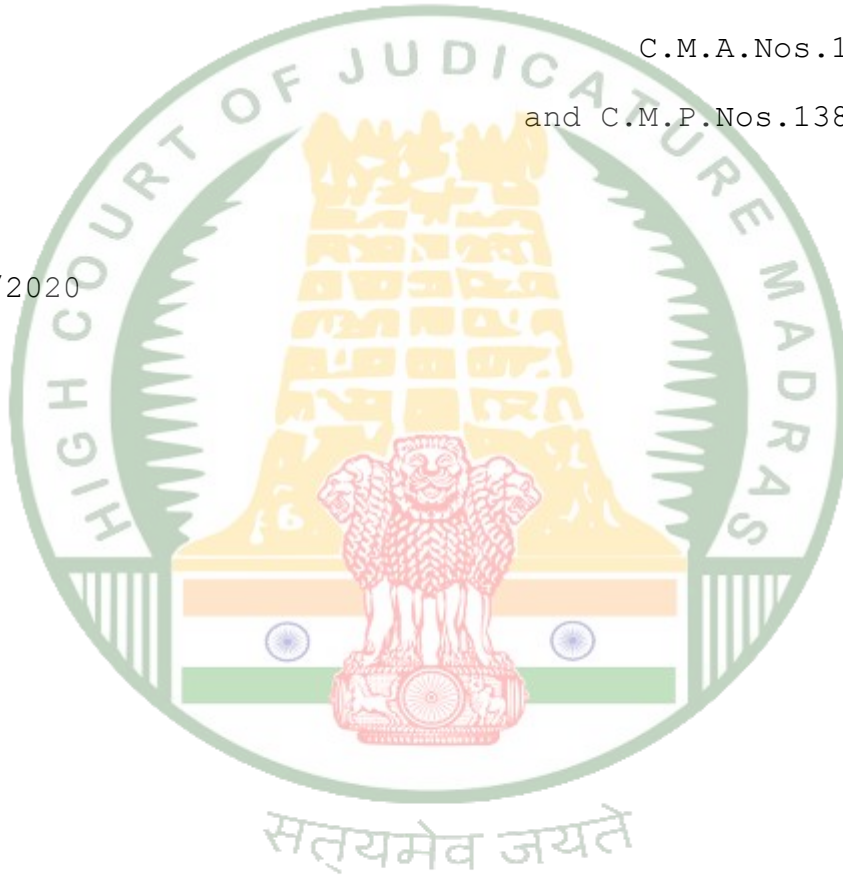
1.The Additional District Judge,
Motor Accidents Claims Tribunal, Krishnagiri.

2.The Section Officer,
VR Section, Madras High Court.

+3cc to Mr.M.Krishnamoorthy, Advocate Sr.88387, 88388, 88389

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