

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.820 of 2012 and
M.P.No.1 of 2012

ICICI Lombard General Insurance Company Ltd
ICICI Bank Towers
Bandra Kurla Complex
Bandra East
Mumbai -400 051

...Appellant / 2nd Respondent

Vs

1. Rukumani ...Respondent/Claimant

2. Ebrahim ...Respondent/1st Respondent
(R2-Set Exparte in Lower Court)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 09.08.2011 made in M.C.O.P.No.507 of 2006 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Salem.

For Appellant : Ms. R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company, challenging the negligence aspect fixed by the Claims Tribunal in MCOP No.507 of 2006.

2.The case in brief, is as follows:

On 29.08.2005 at about 9.15 pm when the claimant was walking on the left side of Salem-Dharmapuri main Road, Deevattipatty, a two wheeler bearing Reg.No.KA 03 ES 2135 belonging to the 2nd respondent herein and insured with the appellant herein came in a rash and negligent manner, dashed against the claimant, due to which, she sustained fracture injuries. Stating that the accident had happened only due to the rash and negligent riding of rider of the two wheeler, the claimant had filed a claim petition before the Tribunal claiming a compensation of Rs.4,00,000/-. After an elaborate trial, the Tribunal has fixed the liability on the insurer of the offending

vehicle and awarded a total compensation of Rs.1,60,688/- with interest at the rate of 7.5% per annum from the date of petition.

3. Challenging the negligence fixed by the Tribunal on the appellant Insurance Company, the present Civil Miscellaneous Appeal has been filed.

4. Heard the learned counsel for the appellant.

5. The learned counsel for the appellant has submitted that the Tribunal has failed to note that the rider of the two-wheeler had no driving license at the time of accident. The Tribunal has failed to appreciate that the license was not produced by the rider either before the police authorities nor to the notice issued by the appellant herein. Hence, the Tribunal ought to have exonerated the appellant herein.

6. Despite ordering notice to the respondents, notice was not served to the 1st respondent due to 'no such address'. As far as the 2nd respondent is concerned, he was set exparte. Hence, the appeal is taken up for disposal, due to paucity of time.

7. A perusal of the award would establish that based on Ex.P.1 First Information Report and the evidence of PW 1/ the claimant, who has deposed that the accident had taken place only due to the rash and negligent riding of the rider of the two wheeler, the Tribunal has fastened the negligence on the rider of the two wheeler. The main contention raised by the appellant herein is that the rider of the two wheeler had not valid driving license at the time of accident. Further, it is contended that though notice has been sent to the rider of the two wheeler, for producing his driving license, he has not turned up. Merely, non production of driving license by the rider/owner, to the Insurance Company/appellant herein would not mean that he was not having the driving license. The findings arrived at by the Tribunal on negligence aspect is based on the weightage of evidence, probabilities of case, settled principles of law and on conventional methodologies. Hence, there is no need to interfere with the same.

8. As far as quantum of compensation awarded by the Tribunal is concerned, the appellant herein has not challenged the same and hence this Court do not want to detail about those aspects.

9. In the result, affirming the award of the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded

by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant forthwith, through RTGS. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal /
II Additional Subordinate Judge,
Salem.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+1cc to M/s.R.SreeVidhya, Advocate Sr.75788

C.M.A.No.820 of 2012
and
M.P.No.1 of 2012

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srg 15/10/2020

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