

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2160 and 2161 of 2016
and C.M.P.Nos.15530 and 15531 of 2016

Reliance General Insurance Co. Ltd.,
Reliance Tower's 6th floor,
6, Haddows Road, Nungambakkam,
Chennai - 600 006. ... Appellant in both appeals

Vs

K.Gnanasekaran ... 1st respondent in C.M.A.No.
2160 of 2016

Umarani ... 1st respondent in C.M.A.No.
2161 of 2016

Sivakumar ... 2nd respondent in both
appeals

C.M.A.No.2160 of 2016 filed under Section 173 of the Motor
Vehicles Act against the judgment and decree dated 13.12.2013
made in MCOP No.3399 of 2010 on the file of the Motor Accidents
Claims Tribunal, Special Sub Judge - II, Chennai.

C.M.A.No.2161 of 2016 filed under Section 173 of the Motor
Vehicles Act against the judgment and decree dated 13.12.2013
made in MCOP No.3400 of 2010 on the file of the Motor Accidents
Claims Tribunal, Special Sub Judge - II, Chennai.

For Appellant : Mr.S.Arunkumar
in both appeals

For R-1 : Ms.M.Malar
in both appeals

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the
Insurance Company against the awards of a sum of Rs.4,00,000/-
towards compensation to the first respondent in C.M.A.No.2160 of

2016 and Rs.25,000/- towards compensation to the first respondent in C.M.A.No.2161 of 2016, respectively, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:

On 10.03.2010 at about 21.15 hours the first respondent in CMA.No.2160 of 2016 was riding his TVS Star City motorcycle bearing Reg.No.TN-22-AV-6197 from Chrompet to Tambaram. His wife Umarani, the first respondent in CMA.No.2161 of 2016, was travelling in the motorcycle as pillion rider. When the vehicle reached near Chrompet M.I.T. under the bridge opposite to Ganesan Kerosene bunk, the Tata van bearing Reg.No.TN-20-H-0480 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, both the first respondent in these appeals sustained grievous injuries. They filed claim petitions before the Tribunal in MCOP Nos.3399 and 3400 of 2010. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.4,00,000/- and Rs.25,000/- respectively, with interest at the rate of 7.5% per annum from the respective dates of the petitions.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in fixing the liability on the appellant Insurance Company, since the driver of the Tata van bearing Reg.No.TN-20-H-0480, was not having the valid and effective driving licence and hence the Insurance Company is not liable to pay any compensation to the claimants. On the other hand, he submitted that the compensation amount awarded by the Tribunal in respect of the first respondent in C.M.A.No.2160 of 2016 is excessive and exorbitant, but he has not disputed the quantum of compensation awarded by the Tribunal in respect of the first respondent in C.M.A.No.2161 of 2016.

5.The learned counsel for the first respondent in these appeals has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation amounts and hence the same do not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent in these appeals and perused the materials available on record carefully and meticulously.

7.Ex.P5-First Information Report was registered against the driver of the Tata van bearing Reg.No.TN-20-H-0480 stating that he was responsible for the accident, which corroborated with the evidence of P.Ws.1 and 2 / claimants. The owner and driver of the van remained silent throughout the enquiry before the Tribunal. Considering the materials and evidence available on record and in the absence of any contra evidence adduced on the side of the Insurance Company, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van, which factual finding this Court is not inclined to interfere.

8.With regard to the issue of non-possession of driving licence on the part of the driver of the van, the Tribunal has observed that Regional Transport Officer or the Investigation Officer of a criminal case alone are the competent authorities to prove as to whether a particular person was holding a valid driving licence to drive a vehicle or not, but in the present case, the Insurance Company has miserably failed to prove that the driver of the van was not holding a valid driving licence at the time of accident and hence the Insurance Company is liable to pay compensation to the claimants. In this connection, this Court is of the view that only if there is availability of any driving licence and the same requires to be verified by the authorities, the same can be referred to the particular Regional Transport Office for verification. Ex.R1 is the reply given by the RTO of Chennai North West for the summons issued by the Tribunal in which he stated that the driving licence number and the date of birth of the driver are essential to find out the driving licence of a particular person. Only if there is existence of any driving licence it can be checked as to its genuineness / validity. In the present case, the Insurance Company has taken steps by issuing notices to the owner and driver of the vehicle to prove as to whether the driver was possessing a valid driving licence or not, but the same have been returned. Ex.R2 is the copy of notice and the returned postal covers sent to the first respondent and his driver. Further, both the driver and owner of the van remained silent before the Tribunal throughout. In the circumstances, it cannot be stated that the Insurance Company has not taken any steps to prove that the driver was not holding a valid driving licence. In the circumstances, this Court deems it fit to direct the appellant Insurance Company to pay compensation to the claimants at the first instance, and thereafter recover the same from the owner of the vehicle, since there was violation of policy conditions on the part of the owner of the van by permitting the driver to drive the van without valid driving licence to drive the same.

9. With regard to the quantum of compensation relating to the injured in CMA No.2160 of 2016, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed. Since the quantum of compensation relating to the injured in CMA No.2161 of 2016 is not disputed, the same need not be interfered with by this Court.

10. In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, 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, the first respondent in these appeals / claimants are permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amounts.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

av/km
To

The Special Sub Judge - II,
Motor Accidents Claims Tribunal, Chennai.

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

+1cc to M/s.S.Arunkumar, Advocate Sr.89265
+2cc to M/s.M.Malar, Advocate Sr.88944 and 88945

C.M.A.Nos.2160 and 2161 of 2016
and
C.M.P.Nos.15530 and 15531 of 2016

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srg 17/03/2020