

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1748 of 2019
and C.M.P. Nos. 5546, 17140 & 17143 of 2019

Oriental Insurance Co. Ltd.,
Saravanan Arcade, Near Sub Registrar Office,
Avinashi 641 654. ... Appellant/Respondents

Vs.

1. Sangeetha
2. Alaudeen
3. Balaji Apparels,
No.15(2) 9, P.V.G. Nivas,
Murugampalayam South, Avinashi Road,
Tiruppur. ... Respondents/Petitioners
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 27.02.2018, made in M.C.O.P.No. 1105 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Mr. K. Vinod
for Mr. E. Veera Ravindran

For Respondents: Mr. N.S. Suganthan (for R1)
for M/s. N. Manokaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 27.02.2018, made in M.C.O.P.No. 1105 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Tiruppur.

2.The 1st respondent is the claimant in M.C.O.P.No. 1105 of 2013, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Tiruppur. She filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 21.08.2012.

3.According to the 1st respondent, on the date of accident, while she was walking on the left side of the Murugampalayam-Vidhyalam Road, the 2nd respondent, rider of the Motorcycle bearing Registration No.TN-39-M-7672 belonging to the 3rd respondent drove the vehicle in a rash and negligent manner and dashed against the 1st respondent and caused accident. The 1st respondent, aged 29 years, sustained grievous injuries. According to the 1st respondent, the 2nd respondent, rider of the motorcycle is responsible for the accident and as the owner of the vehicle, the 3rd respondent and as the insurer of the vehicle, the appellant are liable to pay compensation.

4.The respondents 2 and 3 remained exparte before the Tribunal.

5.The appellant filed counter statement and denied involvement of the alleged Motorcycle in the accident. According to the appellant, the manner of accident narrated in the FIR and the petition is false. The complaint with the Police had been filed after a delay of three days with false facts. The 2nd respondent, rider of the two-wheeler was not possessing valid and effective driving license at the time of accident. For the breach and violation of the terms and conditions of the insurance policy, the appellant-Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 5 documents as Exs.P1 to P5. The appellant examined two witnesses as R.W.1 and R.W.2 and marked 6 documents as Exs.R1 to R6.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the 2nd respondent, rider of the Motorcycle belonging to the 3rd respondent and directed the appellant-Insurance Company as insurer of the vehicle to pay a sum of Rs.6,00,000/- as compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent as rider of the Motorcycle did not possess driving license at the

time of accident.

8. Against the said award dated 27.02.2018, made in M.C.O.P.No.1105 of 2013, the appellant has come out with the present appeal.

9. Learned counsel appearing for the appellant submitted that at the time of accident, 2nd respondent, rider of the motorcycle did not possess valid driving license. The Tribunal ought to have exonerated the appellant-Insurance Company for violation of permit and policy condition by the 3rd respondent, owner of the vehicle. The Tribunal erred in ordering pay and recovery. Though the Medical Board has assessed the disability of the 1st respondent as 30%, in the report it was not stated that the 1st respondent has suffered functional disability. The 1st respondent has not proved that she was working as a Tailor and due to the injuries, she could not continue her job as Tailor. In such circumstances, the Tribunal erred in adopting the multiplier method and granting compensation for loss of income for 30% disability, when the said disability is only for a part of the body. The 1st respondent failed to prove her avocation and income. In the absence of any materials, the monthly income of Rs.6,000/- fixed by the Tribunal and 40% enhancement awarded towards future prospects are without any basis. The amounts awarded under different heads are excessive and prayed for setting aside the award of the Tribunal and allowing the appeal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that she was working as a Tailor in Parvathavarthini Baniyan Company and was earning a sum of Rs.10,000/- per month. In the accident, she sustained injuries in the right leg and due to the same, she could not continue her work as Tailor and lost her job. The Tribunal erred in fixing meagre monthly income at Rs.6,000/-. The Tribunal considering the nature of injuries and avocation of the 1st respondent, applied multiplier method for granting compensation towards loss of earning capacity. The 1st respondent took treatment as in-patient in Revathi Hospital, Tirupur from 21.08.2012 to 27.08.2012, for a period of 7 days. The Tribunal has not granted any amount towards attendant charges, loss of amenities and damages to clothes and prayed for enhancing the compensation and dismissal of the appeal.

11.Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

12.From the materials on record, it is seen that accident has occurred due to rash and negligent riding by the 2nd respondent, rider of the motorcycle belonging to the 3rd respondent. At the time of accident, the rider did not possess driving license. It is well settled law that for not possessing driving license by the rider of the vehicle, the claimant who is a third party should not suffer and they must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the Insurance Company is directed to pay the compensation to the claimants at the first instance and recover the amounts from the owner of the vehicle. The Tribunal following various judgments of the Hon'ble Apex Court and this Court, ordered pay and recovery. There is no error in the reasoning of the Tribunal in ordering pay and recovery.

13.As far as the quantum of compensation is concerned, the 1st respondent has contended that she was working as a Tailor and earning a sum of Rs.10,000/- per month and due to the injuries, she lost her job. She has not produced any materials to substantiate her income of Rs.10,000/- per month. The accident is of the year 2012. The 1st respondent was aged 31 years at the time of accident. The Tribunal considering the contention of the 1st respondent, fixed the notional income at Rs.6,000/- per month and granted 40% enhancement towards future prospects. The same is not excessive. The Medical Board assessed that 1st respondent suffered 30% disability due to fracture in right leg. The alleged avocation of the 1st respondent was Tailor. When the 1st respondent has suffered a fracture in right leg, she could not continue her work as Tailor. The Tribunal considering the report of the Medical Board and claim of the 1st respondent that she was a Tailor before the accident, has adopted multiplier method and awarded compensation for loss of earning capacity. The multiplier method adopted by the Tribunal, in the facts of the present case, is proper and valid. The amounts awarded under different heads are not excessive.

14.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.6,00,000/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 1105 of 2013 at

the first instance and recover the same from the 3rd respondent. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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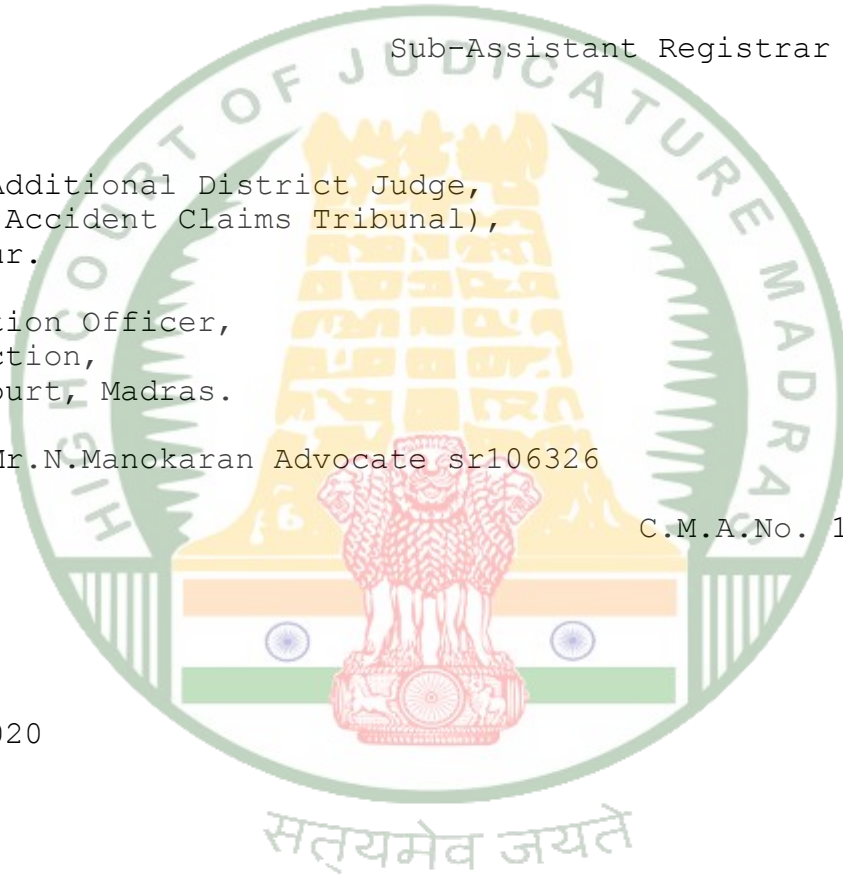
1.The II Additional District Judge,
(Motor Accident Claims Tribunal),
Tiruppur.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.N.Manokaran Advocate sr106326

C.M.A.No. 1748 of 2019

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