

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2650 & 2651 of 2016
and C.M.P.Nos.18919 and 18920 of 2016

United India Insurance Co. Ltd.,
Divisional Office-II,
No.104-A, Peramanur Main Road,
Salem-7.

.. Appellant in both C.M.A's

Vs.

1.Raja .. 1st Respondent in C.M.A.No.2650 of 2016
1.Sivanantham .. 1st Respondent in C.M.A.No.2651 of 2016
2.Mohan .. 2nd Respondent in both C.M.As

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 27.04.2016 made in M.C.O.P.Nos.1056 and 1102 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem District.

In both CMAs:
For Appellant : Mr.J.Chandran

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 27.04.2016 made in M.C.O.P.Nos.1056 and 1102 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem District.

2.Both the appeals are arising out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is second respondent in M.C.O.P.Nos.1056 and 1102 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II, Salem District. The claimants filed the said claim petitions claiming

a sum of Rs.3,00,000/- and Rs.1,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 14.01.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the mini door auto belonging to the first respondent and directed the second respondent/Insurance Company being the insurer of the said mini door auto to pay a sum of Rs.3,44,222/- and Rs.15,000/- as compensation to the claimants in M.C.O.P.Nos.1056 and 1102 of 2010.

5.Against the said award passed by the Tribunal, dated 27.04.2016 made in M.C.O.P.Nos.1056 and 1102 of 2010, the second respondent/Insurance Company has come out with the present Civil Miscellaneous Appeals challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

6.The learned counsel appearing for the second respondent/Insurance Company contended that the accident occurred only due to rash and negligent driving by the claimants and they are entitled to compensation only under Section 140 of the Motor Vehicles Act. The driver of the mini door auto was not responsible for the accident and at the time of accident, the driver did not possess valid driving license with badge endorsement. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

7.I have heard the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

8.From the award of the Tribunal, it is seen that the claimants have examined themselves as PW1 and PW2 respectively and deposed that the accident occurred only due to rash and negligent driving by the mini door auto driver. Further, Ex.P1/FIR is lodged only against the driver of the mini door auto. The Tribunal considering the fact that there is no contra evidence on the part of the second respondent/Insurance Company and considering Ex.P1/F.I.R. and evidence of P.W.1 & P.W.2 held that the accident occurred only due to rash and negligent driving by the driver of the mini door auto. The contention of the learned counsel for the second respondent/Insurance Company

that the appellant is not liable to pay compensation as the driver of the mini door auto did not possess driving license with badge endorsement for driving the commercial vehicle, is contrary to the judgement of the Hon'ble Apex Court reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,], wherein it has been held that once a person possess valid driving license to drive a particular class of vehicle, he can drive all category of vehicle and there is no necessity to obtain endorsement or badge for driving commercial vehicle. From the ratio of the above judgement, it is clear that the Insurance Company is not entitled to dispute their liability to pay compensation to the claimants on the ground of lack of endorsement or badge. As far as quantum of compensation is concerned, the Tribunal considering the nature of injury, evidence of Doctor and disability certificate produced by the claimants, awarded compensation to the claimants, which are not excessive. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

9. In the result, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeals are dismissed. The second respondent/Insurance Company is directed to deposit the award amount granted by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective award amount along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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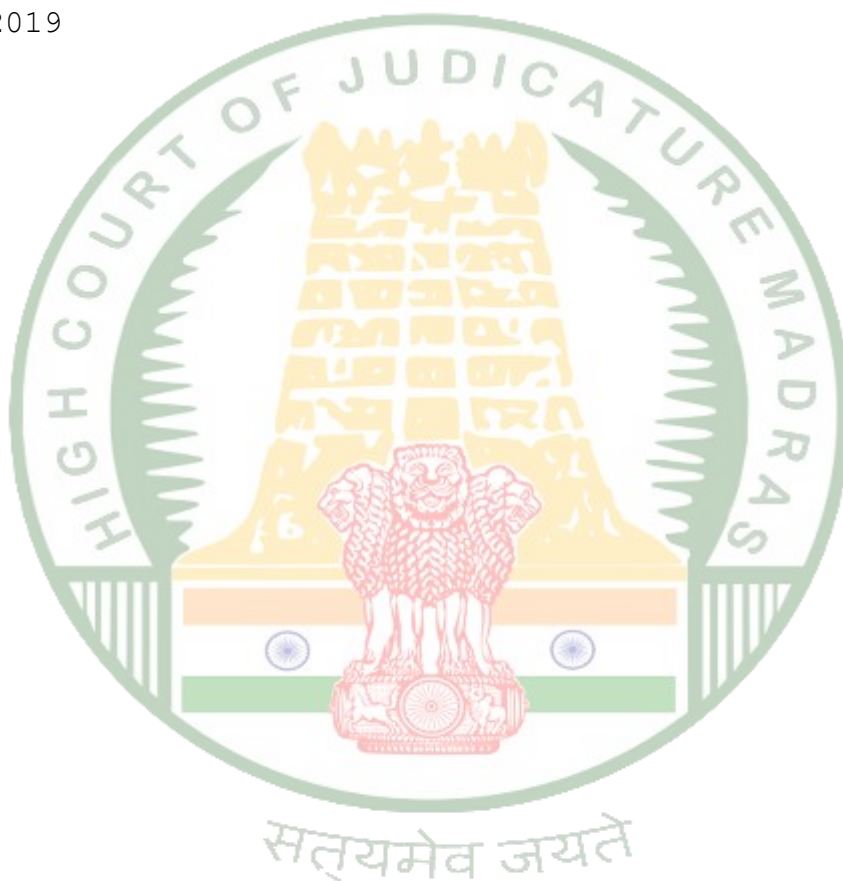
1.The Motor Accident Claims Tribunal,
Special Subordinate Judge No.II,
Salem District.

2. The Section Officer,
V.R Section,
High Court, Madras (2copies)

+1cc to Mr.J.Chandran, Advocate sr.no.3187

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