

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.992 of 2013

The New India Assurance Company Limited,  
No.110, A.P.V.Mansion,  
Gandhi Market Road,  
Arani Town, Thiruvannamalai District.

... Appellant/2<sup>nd</sup> Respondent

Vs.

1.Chinnakuzhandai Ammal

2.K.Subha Lakshmi ...Respondents/1<sup>st</sup> & 2<sup>nd</sup> Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.10.2012 passed in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, Arani, Thiruvannamalai District.

For Appellant : Mr.N.Anand

For R1 : Mr.P.Satheesh Kumar

For R2 : No appearance

J U D G M E N T

The appellant is the second respondent in M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, Arani, Thiruvannamalai District. The first respondent filed the claim petition under Section 163 (A) of the Motor Vehicles Act, 1988, seeking compensation of Rs.1,00,000/- for the injuries sustained by her in a road accident that took place on 08.10.2004.

2.The case of the claimant is that on 08.10.2004, the claimant was walking near her house and about 06.15 A.M., a speeding lorry bearing Registration No.AP 21 T 0784 belonging to the second respondent and insured with the appellant / New India Assurance Company Limited hit her, as a result of which, she sustained injuries all over her body and was admitted in a hospital. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration No.AP 21 T 0784 belonging to the second respondent was the cause of the accident and that since the said tractor was insured with

the appellant / New India Assurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation to her.

3.The second respondent / owner of the vehicle remained absent before the Tribunal and therefore, she was set ex-parte. The appellant / New India Assurance Company Limited, contested the claim petition. The learned Motor Accident Claims Tribunal, Arani, after analysing the evidence on record, awarded a compensation of Rs.33,916/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the second respondent / New India Assurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Mr.N.Anand, learned counsel appearing for the appellant / New India Assurance Company Limited, contended that though the driver of the second respondent's vehicle drove the vehicle without a valid permit, the Tribunal failed to direct the appellant / New India Assurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the vehicle, the second respondent herein. He would further contend that the award passed by the Tribunal is also exorbitant.

5.Per contra, Mr.P.Satheesh Kumar, learned counsel appearing for the first respondent / claimant contended that the Tribunal after considering all the aspects of the case has awarded just compensation and the same cannot be said to be on the higher side.

6.No appearance on behalf of the second respondent / owner of the vehicle.

7.A perusal of the Motor Vehicle Inspector's report (Ex.R1) shows that the lorry was plied without any valid permit on the date of accident. The owner of the lorry did not file the permit and therefore an adverse inference is drawn against the owner of the vehicle. It is a settled law that if the owner of the lorry plies the vehicle without a valid permit, the Insurance Company should pay the amount in the first instance and then recover the same from the owner of the vehicle.

8.As far as quantum of compensation is concerned, the Tribunal did not consider that the claim petition was filed under Section 163 (A) of the Motor Vehicles Act, 1988. Dr.Kartheesan (P.W.2) assessed partial permanent disability as 25%. A perusal of the disability certificate (Ex.P4) shows that the claimant who was aged 65 years on the date of accident sustained fracture of bones on her right hand and the bones were malunited. In the circumstances, the partial permanent disability is fixed as 20%. As per Schedule 2

appended to Section 163 (A) of Motor Vehicles Act, 1988, the proper multiplier to be adopted in the instant case is '5'. In the claim petition, the claimant has contended that she was a daily wage labourer earning a sum of Rs.3,000/- per month. Considering the year of accident, the monthly notional income of the claimant is fixed as Rs.3,000/- and a sum of Rs.36,000/- (Rs.3,000/- X 12 X 5 X 20/100) is awarded towards loss of earning capacity. Apart from this, the claimant is entitled to a sum of Rs.5,000/- towards pain and sufferings. No medical bills had been produced by the claimant. The award passed by this Court is extracted hereunder:

| S.No  | Head                     | Amount granted by this Court |
|-------|--------------------------|------------------------------|
| 1.    | Loss of earning capacity | Rs.36,000/-                  |
| 2.    | Pain and sufferings      | Rs.5,000/-                   |
| Total |                          | Rs.41,000/-                  |

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.  
No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.33,916/- to Rs.41,000/-.

(iii) The first respondent / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant / New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.41,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.209 of 2004 on the file of the Motor Accident Claims Tribunal, Arani, Thiruvannamalai District, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the vehicle, the second respondent herein on the same cause of action.

(v) On such deposit being made by the appellant / New India Assurance Company Limited, the claimant / first respondent is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

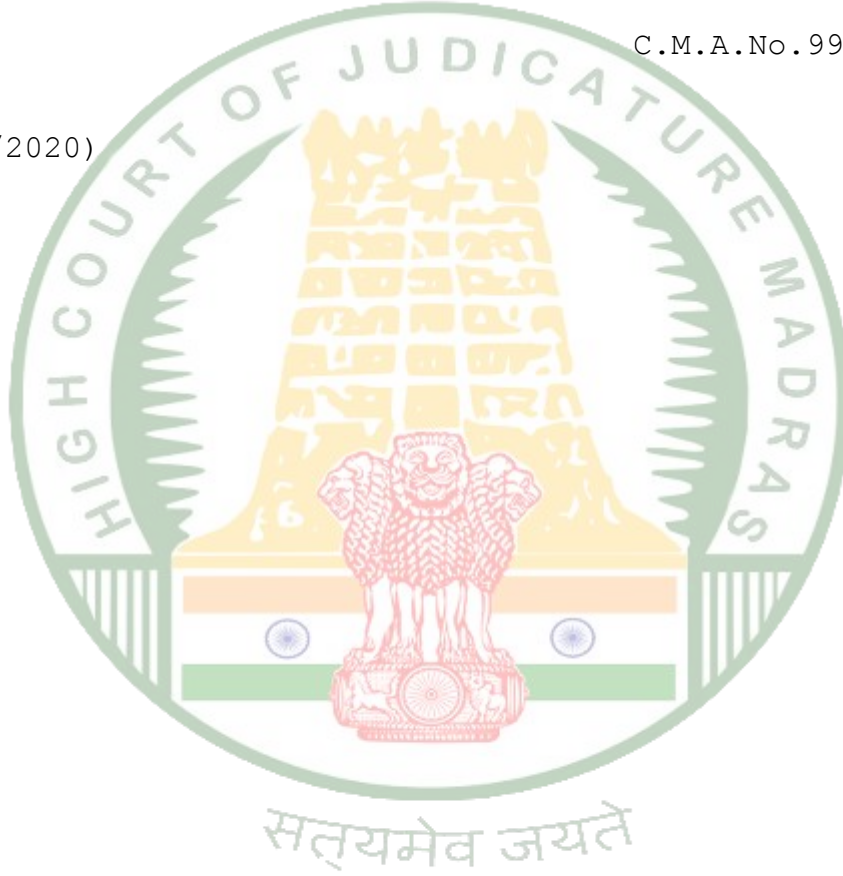
The Motor Accidents Claims Tribunal,  
Arani,  
Thiruvannamalai District.

Copy To  
The Section Officer,  
VR Section, High Court, Madras

+lcc to Mr.P.Satheesh Kumar, Advocate SR.No.87185

C.M.A.No.992 of 2013

VG II(CO)  
GMY(22/07/2020)



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