

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3526 of 2011
and
M.P.No.1 of 2011

United India Insurance Company Limited,
Door No.3, PB.No.1122,
DB. Road, R.S.Puram,
Coimbatore. Appellant /II Respondent

.. Vs ..

1. SundarammalI Respondent/Petitioner
2. K.VijayaganeshII Respondents/Ist Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.04.2011 made in M.C.O.P.No.171 of 2009 on the file of the Motor Accidents Claims Tribunal (II Additional Subordinate Judge), Coimbatore.

For Appellant : Mr.T.Ravichandran

For R-1 : Mr.S.S.Swaminathan

For R-2 : No Appearance

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the Judgment and decree dated 25.04.2011 made in M.C.O.P.No.171 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Coimbatore.

2. The short facts that are essential for the disposal of this appeal is that on 30.11.2008 at about 4.45 p.m., while the claimant was standing left side of the road by carefully near Bharathi Colony Road junction, Avinashi Road, Coimbatore, the driver of the two wheeler bearing Registration No.TN-37-AZ-6994 drove the same in a rash and negligent manner and without adhering the traffic rules and regulations and dashed against the claimant and caused the accident. As a result of which, the claimant sustained grievous injuries. Immediately after the

accident, the claimant was taken to P.S.G. Hospital, Coimbatore and thereafter shifted to Ganga Hospital, Coimbatore. For the injuries sustained by her, the injured/claimant has filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. The injured/claimant examined herself as P.W.1 and Doctor was examined as P.W.2 and one Savithiri was examined as P.W.3. Exs.P.1 to P.10 were marked on the side of the injured/claimant. On the side of the appellant/Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.1,30,877/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs to the claimant.

5. It is seen from the evidence of P.W.1 and P.W.3 and documentary evidence Exs.P.1 to P.5, rash and negligent driving has been totally fixed by the Tribunal on the driver of the second respondent and hence, in view of the presence of positive evidence, the rash and negligence fixed on the part of the driver of the second respondent herein is confirmed. With regard to the nature of injury sustained by P.W.1, P.W.2-Dr.Gajendran was examined before the Tribunal and Ex.P.6-Wound Certificate, Ex.P.7-Discharge Summary, Ex.P.8-Medical bills, Ex.P.9-Disability Certificate and Ex.P.10-X-ray were produced.

6. P.W.2-Dr.Gajendran, in his evidence, has deposed that from the medical records of the Ganga hospital, he ascertained that the claimant had sustained head injury and fracture of both bones of her left leg and for which, the claimant has underwent surgery by fixing rod at Ganga hospital and as per the guidelines of the experts of All India Institute of Medical Science, the Doctor assessed the disability suffered by the claimant at 25%.

7. Based on the evidence of the Doctor, the Tribunal has fixed the permanent disability at 25% and accordingly, awarded a sum of Rs.37,500/- by fixing Rs.1,500/- per percentage of disability. Under the head of pain and sufferings, the Tribunal has awarded a sum of Rs.15,000/-. In total, the Tribunal has awarded a sum of Rs.1,30,877/- under various heads. On going through the evidence of P.W.2-Doctor, I find that the quantum of compensation awarded by the Tribunal cannot be said to be excessive for the nature of injuries sustained by the injured/claimant, as contended by the learned counsel for the claimant. Accordingly, this point is answered against the appellant-Insurance Company.

8. Learned counsel appearing for the appellant-Insurance Company would contend that the evidence of R.W.1 was not taken into consideration before fixing the liability on the part of the second respondent herein.

9. This Court has given its anxious consideration to the said contention. After going through the evidence of R.W.1, Motor Vehicle Inspector, Grade-II of Coimbatore South RTO office, it is found that the driving license of the second respondent herein was not produced at the time of the inspection and based upon the same, R.W.1 has stated in his report under Ex.P.3, that the driving license was not produced by the second respondent herein. Since there was a specific dispute raised by the appellant-Insurance Company that at the time of the accident, the driver has not possessed any valid license and also relied upon the documentary evidence of Ex.P.3 and also the evidence of R.W.1, in the absence of any positive evidence adduced, this Court holds that there is no valid license possessed by the driver of the motorcycle at the time of accident and accordingly, the appellant-Insurance Company is liable to pay the compensation amount to the first respondent/claimant and after paying the amount, it is open to the appellant-Insurance Company to recover the same from the second respondent herein.

10. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,30,877/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount 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 to the credit of M.A.C.T.O.P.No.171 of 2009. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

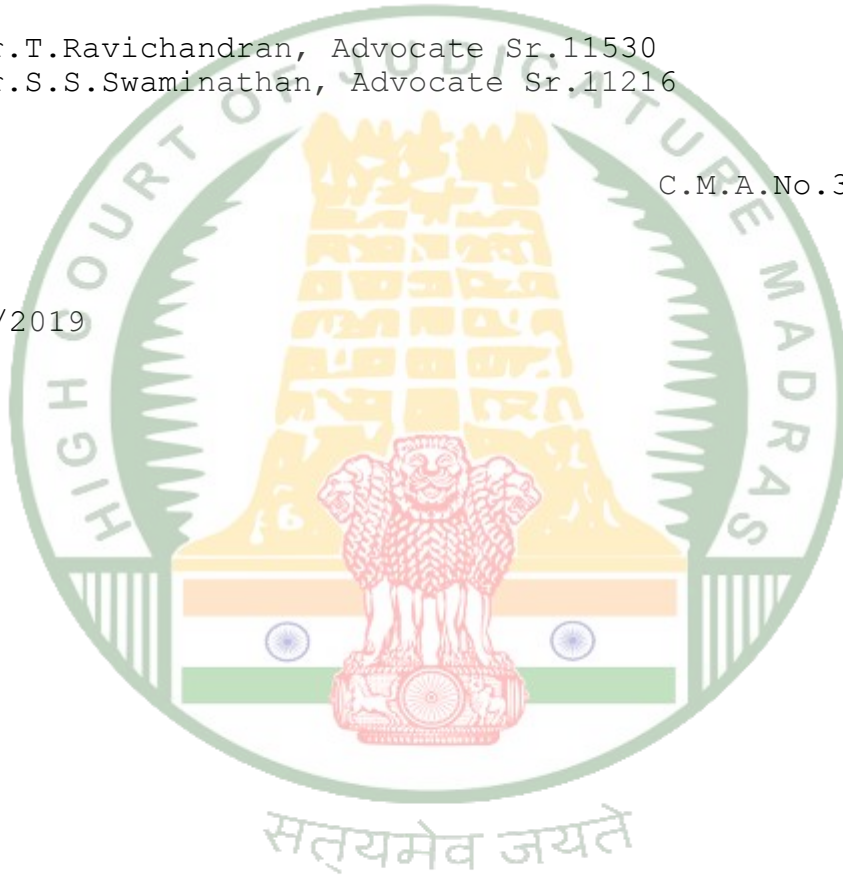
Copy to

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

+1cc to Mr.T.Ravichandran, Advocate Sr.11530
+1cc to Mr.S.S.Swaminathan, Advocate Sr.11216

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BS (CO)
srg 13/06/2019



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