

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2360 of 2017
and C.M.P.No.12633 of 2017

Reliance General Insurance Co.Ltd.
rep.by its Manager,
Sri Lakshmi Complex, First Floor
Bharathi Street, Omalur Main Road
Swarnapuri, Salem District. Appellant/2nd Respondent

Vs

1.Mohana

2.Velusamy Respondents/Petitioner and 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 16.03.2016 made in MCOP No.45 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.A.R.Suresh for R1
No appearance for R2

JUDGMENT

The case in brief, is as follows:

On 25.10.2014 at about 06.45 p.m., the first respondent was proceeding from Kabilar Hill to Paramathi Main Road by walk, on the left side of the road. When she reached near Malar Matric School, the TVS-XL two-wheeler bearing Reg.No.TN-28-AW-2746 came from the back side of the first respondent, in a rash and negligent manner and dashed against the first respondent. Due to the said impact, the first respondent sustained fractures and grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.15,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,62,608/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the award of the Tribunal, this Civil Miscellaneous Appeal has been filed by the Insurance Company.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has failed to note that the second respondent is duty bound under Section 5 of the Motor Vehicles Act to ensure that the vehicle is driven by a person possessing a valid driving licence. He also submitted that the Tribunal ought to have held that the appellant Insurance Company is not liable to pay any compensation in view of the wilful breach committed by the second respondent by allowing a person to drive the vehicle without a valid driving licence. On the other hand, he submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent / claimant and perused the materials available on record carefully and meticulously.

6.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the TVS-XL two-wheeler and the said finding is not disputed by both sides. With regard to non-possession of valid driving licence by the rider of the two-wheeler, the official of the Insurance Company has been examined before the Tribunal as R.W.1. He deposed before the Tribunal that the rider of the two-wheeler, viz. Velusamy, was not possessing the valid driving licence at the time of accident. He also deposed that an Advocate Notice under Ex.R3 has been sent to the rider of the two-wheeler to produce a copy of the driving licence and the relevant details to find out whether the rider was having the valid driving licence or not at the time of accident, he has not received any reply from the rider, even though the rider has received the intimation. The Tribunal has accepted the stand of the Insurance Company that the driver of the two-wheeler was not possessing the valid driving licence, and had observed in the impugned judgment that the owner and the insurer are liable to pay compensation. But in the final part of the judgment, the Tribunal directed the Insurance Company alone to pay the compensation to the claimant. A perusal of the materials and evidence available on record and also the impugned judgment, makes it clear that the rider of the two-wheeler was not possessing the valid driving licence, which amounted to violation of policy conditions.

7. With regard to quantum of compensation, the Tribunal has awarded a sum of Rs.1,38,000/- towards 46% permanent disability at the rate Rs.3,000/- per percentage of disability, relying upon Ex.P11-Disability Certificate issued by P.W.2-Doctor and Rs.1,00,000/- towards loss of income. Further, the Tribunal has awarded Rs.2,400/- towards loss of income during the treatment period, Rs.25,000/- towards pain and suffering, Rs.82,208/- towards medical expenses, which is an actual expenditure, Rs.5,000/- towards transport to hospital and Rs.10,000/- towards extra nourishment. The amounts awarded by the Tribunal towards the above heads are in consonance with the injuries suffered by the claimant and are found reasonable.

8. In these circumstances, while confirming the quantum of compensation awarded by the Tribunal, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, the second respondent herein, in accordance with law.

9. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

10. The appellant Insurance Company is directed to deposit the compensation amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed to recover the compensation from the owner of the two-wheeler, the second respondent herein, in the manner known to law.

सत्यमेव जयते Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

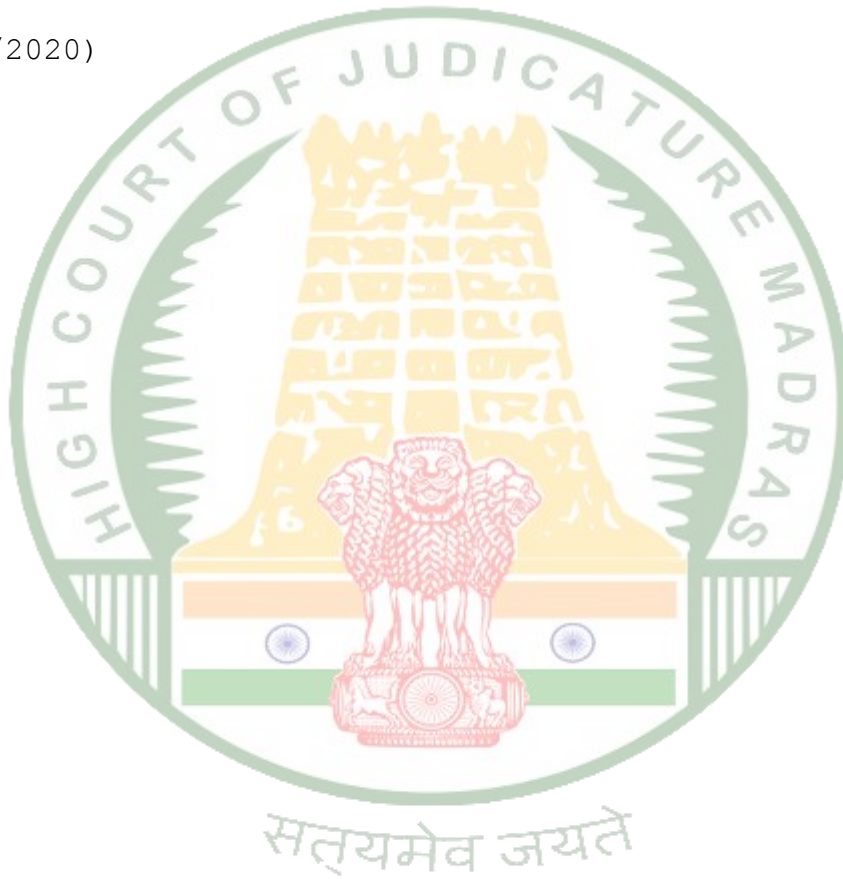
2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arunkumar, Advocate SR.No.89263

+1cc to Mr.A.R.Suresh, Advocate SR.No.89322

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