

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.113 of 2015

V.Ranganayaki

...Appellant/Petitioner

/versus/

1.A.Praveen

2.M.Kannia Selvakumar

3.United India Insurance Company Ltd.,
Regional Office at
No.364-367, Dr.Nanjappa Road,
Coimbatore-641 018.

4.S.V.Jayashankar

5.R.Thiagarajan

6.The Oriental Insurance Co.Ltd.,
Indian Life Building,
Trichy Road, Coimbatore-641 005.

7.The State of Tamil Nadu,
Rep.by its Secretary,
Transport Department,
Chennai.

8.The Director General of Police,
Mylapore, Chennai.

9.The Secretary,
Home (Transport) Department,
Chennai

(RR7 and RR8 suo moto impleaded vide order
dated 29.01.2015 made in C.M.A.No.113 of 2015)

(RR9 suo moto impleaded vide order
dated 01.04.2015 made in C.M.A.No.113 of 2015) ...Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the IV Additional District and Sessions Judge, Coimbatore, dated 28.04.2014 in M.C.O.P.No.1139 of 2006.

For Appellant : Mr.Karthikeyan
for Mr.V.Nicholas

For Respondents: Not ready notice for R2
: Mrs.I.Malar for R3
: No appearance for R1, R4 and R5
: Mr.M.J.Vijayaraaghavan for R6
: Mr.Y.T.Arvind Ghosh for R7 to R9

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the claimant aggrieved by the award passed by the Tribunal in the claim petition M.C.O.P.No.1139 of 2006 fixing the liability against the rider of the offending vehicle and the owner of the offending vehicle dismissing the claim against the Insurance Company.

2. The case of the claimant is that the offending vehicle namely Yamaha Motorcycle bearing registration No.TN 37 A 5022 rash and negligently hit against the rider of the Scooter driven by the claimant and caused injury to the claimant as well as her husband who was arrayed as 4th respondent. The claim petition seeking compensation of Rs.3,00,000/- was filed against the rider, owner and the Insurance Company of the offending vehicle Yamaha and against the rider of the Scooter in which the claimant was travelling as a pillion rider bearing registration No.TN 38 C 7490 and its insurer.

3. The 3rd and 6th respondents, which are the Insurance Companies of the vehicles in which the claimant travelling and the vehicle caused the accident, have filed their counter. While the 3rd respondent contended that the accident occurred due to the negligence of the claimant's husband also and the 2nd respondent vehicle had no valid fitness certificate. The 6th respondent Insurance Company of the Yamaha vehicle contended that the accident occurred due to rash and negligent driving of the 1st respondent and a criminal case has been registered against the 1st respondent for rash and negligent driving. Hence the respondents 1 to 3 alone are liable to pay compensation.

4. The Tribunal based on the First Information Report Ex.P-1 registered a case against the rider of the Yamaha vehicle

and the admission of the 1st respondent before the criminal Court and his payment of fine of Rs.2,000/- held that the accident took place only due to the rash and negligent driving of the 1st respondent. Having held so, it exonerated the Insurance Company/ 3rd respondent on the ground that the offending vehicle had no fitness certificate on the date of accident. Fitness certificate is a basic requirements. The offending motor vehicle had no fitness certificate, hence it amounts to violation of policy condition. Therefore the Tribunal held that the respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.79,590/- with interest at the rate of 7.5%.

5. In the appeal, it is contended that the quantum of compensation is less and the Tribunal ought to have ordered the Insurance Company to pay and recover from the vehicle owner. When the matter came up for admission, this Court with the view that the police and the Transport department are responsible for allowing the vehicle running without proper fitness certificate, registration certificate and Insurance coverage, suo motu impleaded the Secretary to the Transport department and Home department along with Director General of Police to formulate measure to prevent such violation. The impleaded respondent Transport Commissioner filed his report which reads as below:

"2.It is submitted that as per Section 146 of the Motor Vehicles Act 1988, "No persons shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person as the case may be, a policy of insurance complying with the requirements of this chapter".

3.It is submitted that as per Section 84 of the Motor Vehicles Act 1988, "It shall be the condition of every permit that the vehicle to which the permit relates carries valid certificate of fitness issued U/S.56 and is at all times so maintained as to comply with the requirements of this Act and the Rules made thereunder".

4.It is submitted that as per Rules 52(3) of the Central Motor Vehicles Rules 1989, "A motor vehicle other than transport vehicle shall not be deemed to be validly registered for the purposes of Section 39, after the expiry of the period of validity entered in the certificate of registration and no such vehicles shall be used in any public place until its certificate of registration is renewed.

5.It is submitted that as per Section 41 of the Motor Vehicles Act 1988, a certificate of registration issued for non-transport vehicles

shall valid for a period of fifteen years and shall be renewable. Provided as per Rules 62 of Central Motor Vehicles Rules, 1989, a certificate of fitness issued for transport vehicle is valid for a period of two years and shall be renewable for a period of one year.

6. It is also submitted that it is the bounden duty of the owner of the vehicle to comply with the provisions of the Motor Vehicles Act and Rules and to operate their vehicles with valid Registration Certificate, Fitness Certificate and Insurance Certificate."

Similar report was also filed by the Under Secretary, Home Department.

6. The Tribunal on perusing the records has found that the 1st respondent, who was the rider of the offending vehicle and the 2nd respondent is the owner of the vehicle, the vehicle had no proper fitness certificate and hence held that the rider and the owner of the offending vehicle are responsible to pay the compensation. This view is in tune with the provision of the Motor Vehicles Act, which is extracted in the report of the Government.

7. Regarding the liability, this Court totally agree with the view of the Tribunal assessing the quantum of compensation. The claimant had sustained the following injuries:

1. Right Temporal haemorrhage contusion
2. Right Temporal extradural haematoma
3. Fracture on the left parietal bone
4. A lacerated injury measuring 5x3 c.m. Over the left parietal region
5. Multiple Superficial abrasion

The doctor has assessed the disability as 21%. The Tribunal has awarded Rs.2,000/- per percentage and taking note of the medical and other expenses has awarded Rs.79,590/-. Though the claimant in this appeal has contended that the said award amount is very less, there is no material evidence to show that the claimant is entitled for higher compensation.

8. In the above said reasons, this Court confirms the award of the Tribunal. Hence the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpl

To

The IV Additional District and Sessions Judge,
Coimbatore.

Copy to

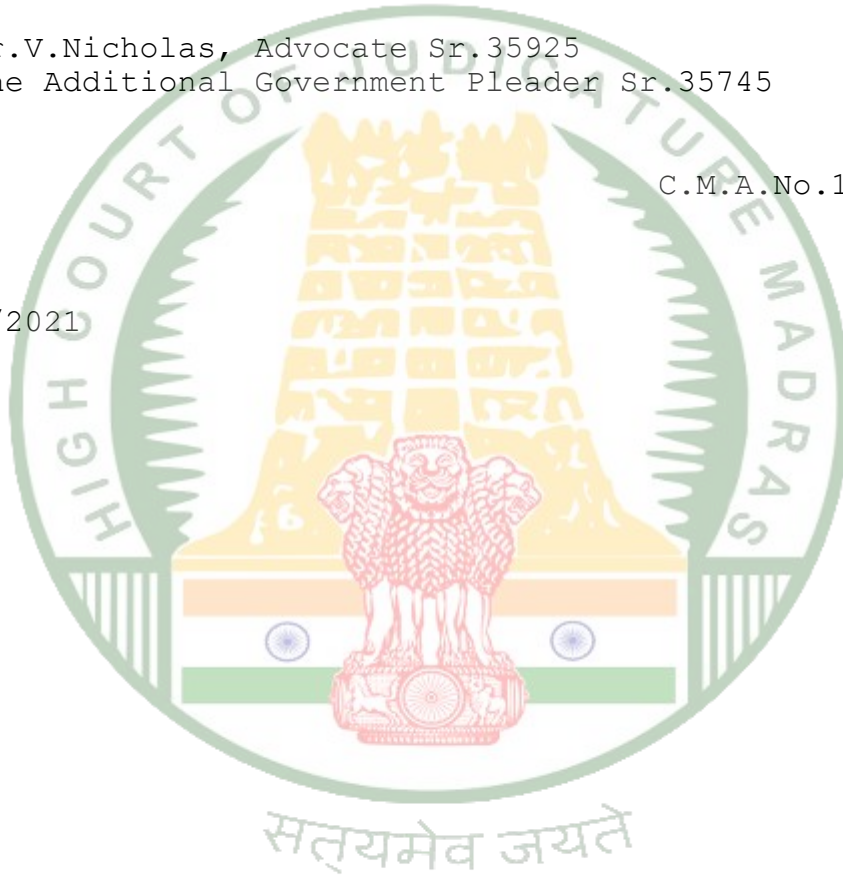
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Nicholas, Advocate Sr.35925

+1cc to the Additional Government Pleader Sr.35745

C.M.A.No.113 of 2015

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