

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.02.2020
C O R A M
THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.549 & 550 of 2012

Annadurai ...Appellant in C.M.A.No.549 of 2012

Sivakumar ...Appellant in C.M.A.No.550 of 2012

Vs

1.Kasthuri

2.ICICI Lambord General Insurance,
Swaranambai Plaza
(Near Adyar Anandabavan),
Omalar Road, Salem,
Salem District.

...Respondents in both

C.M.As

Prayer in C.M.A.No.549 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.A.C.T.O.P.No.93 of 2009 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Attur, dated 29.07.2011 and thereby direct the second respondent to pay the award to the petitioner.

Prayer in C.M.A.No.550 of 2012: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.A.C.T.O.P.No.94 of 2009 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Attur, dated 29.07.2011 and thereby direct the second respondent to pay the award to the petitioner and recover it from the first respondent.

For Appellant : Mr.R.Asaithambi
(in both C.M.As.)

For Respondents : R2-Mrs.Sreevidhya
(in both C.M.As) R1 - Not ready in notice

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

The appellants are the claimants in MCOP.Nos.93 & 94 of 2009, on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Aathur. They filed the claim petitions for

the injuries sustained by them in a road accident that took place on 02.03.2009.

2. The case of the claimants is that on 02.03.2009, at about 06.00 p.m., the claimants were travelling in a motor cycle bearing Regn.No.TN30 1406 as rider and pillion rider on Attur - Salem main road from East towards west direction, very slowly and carefully, following all the traffic rules. While the motor cycle was nearing paruthi manndy, a vehicle bearing Regn.No.TATA ACF TN 54 5272, which was parked on the left (southern) side of the road, came with great speed and dashed against the motor cycle. Due to the said impact, the claimants sustained grievous injuries all over their body.

3. According to the claimants, the rash and negligent driving of the driver of the vehicle bearing Regn.No.TATA ACF TN 54 5272 belonging to the first respondent was the cause of the accident and that since, the owner of the vehicle bearing Regn.No.TATA ACF TN 54 5272 (first respondent) had insured the vehicle with the ICICI Lambord General Insurance, both the owner and the insurer are jointly and severally liable to pay compensation to them.

4. The first respondent remained absent before the Tribunal and therefore, he was set exparte. The second respondent, ICICI Lambord General Insurance Company Limited contested claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Subordinate Judge, Attur, after analysing the evidence on record, awarded a compensation of Rs.22,500/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.93 of 2009 and awarded a compensation of Rs.97,500/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.94 of 2009. The Tribunal further held that since the driver of the vehicle bearing Regn.No.TATA ACF TN 54 5272 (first respondent) did not have a valid driving licence on the date of the accident, ICICI Lambord General Insurance Company Limited is not liable to pay compensation to the claimants. The Tribunal therefore directed the owner of the vehicle bearing Regn.No.TATA ACF TN 54 5272 (first respondent) to pay the entire compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeals.

5. Mr.R.Asaitambi, learned counsel appearing for the appellants / claimants contended that as per the settled legal principles of law, in the absence of a valid driving licence, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner

of the offending vehicle. He also prayed for enhancement of compensation.

6. Per contra, Mrs.R.Srividhya, learned counsel appearing for the second respondent drew the attention of this Court to the orders passed by the Tribunal, in which, the Tribunal has clearly held that the driver of the offending vehicle was not in possession of valid driving licence. She therefore, prayed for dismissal of the appeal.

7. As per the decision in National Insurance Company Limited vs. Swaran Singh and others, reported in 2004 (3) SCC 297, the insurer has to indemnify the compensation amount payable to the third party and the Insurance Company may recover the same from the insured. Infact, the doctrine of 'pay and recover' was considered by the Honourable Supreme Court of India in National Insurance Company Limited vs. Swaran Singh and others, reported in 2004 (3) SCC 297 (cited supra) wherein the Supreme Court of India examined the liability of the Insurance Company in the cases of the breach of policy condition due to disqualification of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the Insurance Company may recover the same from the insured. Applying the above well laid down principles in the instance case, the Insurance Company is directed to 'pay' the compensation amount to the claimants and then 'recover' the same from the owner of the offending vehicle on the same cause of action.

8. CMA.No.549 of 2012: As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.15,000/- towards "pain and sufferings", a sum of Rs.5,000/- towards "Transportation" and a sum of Rs.2,500/- towards "attender charges" which are just and reasonable and hence, this Court is not inclined to interfere with the same. Considering the nature of injuries sustained by the injured, the compensation awarded by the Tribunal is confirmed.

S.No.	Head	Amount granted
1.	Pain and sufferings	Rs.15,000/-
2.	Transportation	Rs.5,000/-
3.	Attender charges	Rs.2,500/-
Total		Rs.22,500/-

Thus the compensation awarded by the Tribunal in MCOP.No.93 of

2009 is hereby confirmed which would carry interest at the rate of 7.5% per annum.

9. CMA.No.94 of 2009: In the instance case, the injured sustained permanent disability of 35%. The Tribunal has awarded a sum of Rs.70,000/- towards "permanent disability" at the rate of Rs.2,000/- per percentage, a sum of Rs.20,000/- towards "pain and sufferings", Rs.5,000/- towards "transportation" and a sum of Rs.2,500/- towards "attender charges", which is also just and reasonable. This Court is not inclined to interfere with the same. The award passed by the Tribunal under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Permanent Disability	Rs.70,000/-
2.	Pain and Sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Attender Charges	Rs.2,500/-
Total		Rs.97,500/-

Thus the compensation awarded by the Tribunal in MCOP.No.94 of 2009 is confirmed hereby which would carry interest at the rate of 7.5% per annum.

10. Accordingly, the appeals filed by the claimants are partly allowed and the order of the Tribunal is hereby modified and pay and recovery is ordered. The second respondent is directed to deposit the compensation amount awarded by the Tribunal together with interest at the rate of 7.5% per annum to the credit of MCOP.Nos.93 of 2009 and 94 of 2009 respectively, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Attur within a period of six weeks from the date of receipt of a copy of this order and then recover the same from the owner of the minor vehicle bearing Regn.No.TATA ACF TN 54 5272 in the manner known to law. On such deposit, the appellants / claimants are at liberty to withdraw the respective compensation awarded to them. No costs.

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Assistant Registrar

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Sub-Assistant Registrar

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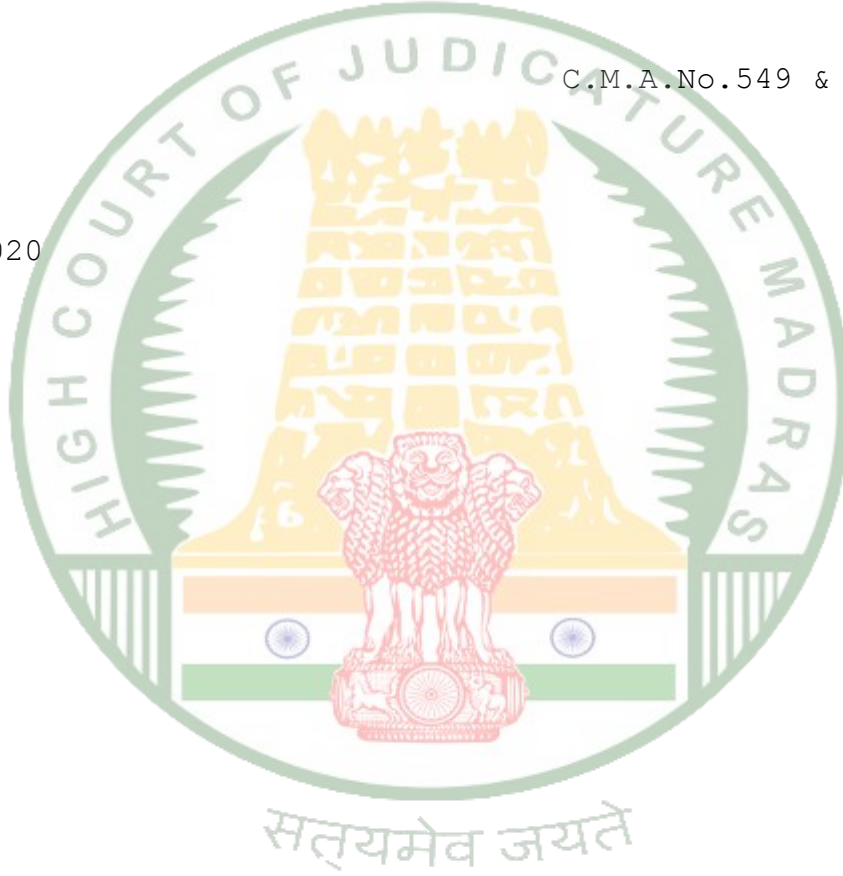
1.The Motor Accident Claims Tribunal,
Subordinate Court, Attur.

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

+2 ccs to Mr.R.Asaithambi Advocate sr nos.15418 & 15419

C.M.A.No.549 & 550 of 2012

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