

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.893 of 2013

R. Senthil Appellant/1st Respondent

Vs.

1. N. Palani ...1st Respondent/Claimant

2. The New India Assurance Co. Ltd.,
F-46, 1st Main Road,
Anna Nagar East,
Chennai 600 102.Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order and decretal order passed to the extent that the liberty given to the 2nd respondent to recover the award amount from the appellant in M.A.C.T.O.P.No.1253 of 2008 by the Motor Accidents Claims (V Court of Small Causes), Chennai dated 01.07.2011.

For Appellant : Mr. M/s Devadason and sagar
For Respondent-1 : No Appearance
For Respondent-2 : Mr.J. Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed by the Motor Accidents Claims Tribunal, V Court of Small Causes Court, Chennai in M.A.C.T.O.P.No.1253 of 2008, dated 01.07.2011.

2.The case of the claimant/first respondent is that on 20.11.2007 at about 21:45 hours, while he was riding a motor cycle bearing Registration No. TN-07-AY-6438, a car bearing Registration No.TN-04-H-1066, which was driven by its driver in a rash and negligent manner in EVR Salai had hit the claimant.

In the result he sustained grievous injuries. Hence he filed a claim petition before the Tribunal seeking Rs.6,00,000/- as compensation. The Tribunal based on the available materials on record awarded Rs.2,89,500/- as compensation.

3.After analysing the available materials on record, the Tribunal observed that the driver of the offending vehicle does not possess valid driving licence at the time of accident. Hence, the Tribunal arrived at a conclusion that the Insurance Company shall pay the compensation amount and recover from the Owner of the vehicle.

4.Challenging the said award passed by the Tribunal, the appellant has come up with this present appeal before this Court.

5.The learned counsel for the appellant submitted that the Tribunal erred in directing the Insurance Company to pay the award amount to the claimant and recover from the owner of the vehicle. He would further contend that R.W.3/Mr.Alban who accompanied the driver at the time of accident posses valid driving licence and prays to allow this appeal.

6.Though notice has been served on the 1st respondent as early as on 17.04.2013 and name has been printed in the cause list, there is no representation for the 1st respondent.

7.The learned counsel for the second respondent submitted that the award passed by the Tribunal is just and reasonable and there is no need to interfere with the same.

8.With regard to negligence aspect, it is seen that P.W.1 deposed that the driver of the car is the cause for the accident. To substantiate the same Exs.P.1 to 3 was filed. The driver of the vehicle was not examined and no contrary evidence was let in by the owner of the vehicle. Therefore, based on the oral and documentary evidences, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the car. This Court is of the view that the findings of the Tribunal are very reasonable, weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

9.From the impugned award passed by the Tribunal, it is seen that the Tribunal observed that the driver of the offending vehicle did not posses valid driving licence at the time of accident, whereof the insurer cannot be held liable. The owner of the vehicle deposed that the driver who drove the vehicle at the time of accident was having only , the learner's licence. Therefore, the Tribunal arrived at a conclusion that if the driver of the offending vehicle did not posses valid driving

licence at the time of accident, the insurer cannot be made liable to pay compensation and directed the insurer of the vehicle to pay the amount and recover from the owner of the offending vehicle. The findings of the Tribunal is persuasive and it cannot be brushed aside easily. Hence, the same is confirmed as such.

10. With regard to quantum, based on Ex.P.8/salary certificate, which shows that the claimant is earning Rs.6,000/- per month. Due to the accident he may not be able to go for the job for atleast 3 months. Hence, Rs.18,000/- (Rs.6,000 x 3) was awarded as compensation towards the head loss of earning. Considering Ex.P.5 and 6 Rs.1,82,500/- is awarded towards the head Medical Expenses. Considering the nature of injuries sustained by the claimant Rs.3,000/-Rs.5,000/- and Rs.20,000/- is awarded towards Transport to hospital, Extra Nourishment and Pain and sufferings respectively. P.W.2/Dr.J.R.R. Thiagarajan examined the injured and assessed the disability of the claimant at 60% and the same is taken and determined Rs.1,000/- per percentage and fixed Rs.60,000/- (Rs.1,000x60%) towards the head Permanent Disability. A sum of Rs.1,000/- is allowed under the head Damage to clothing and materials. Thus, the total compensation was quantified to Rs.2,89,500/- which is hereby tabulated:

Particulars	Amount
Loss of earning	Rs.18,000/-
Transport	Rs.3,000/-
Extra Nourishment	Rs.5,000/-
Damage to clothing and materials	Rs.1,000/-
Medical Expenses	Rs.1,82,500/-
Pain and sufferings	Rs.20,000/-
Permanent Disability	Rs.60,000/-
Total	Rs.2,89,500/-

11. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The second respondent/Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight

weeks, from the date of receipt of a copy of this judgment. On such deposit, the claimant/first respondent is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn
To

The V th Judge,
Motor Accidents Claims,
V Court of Small Causes, Chennai.

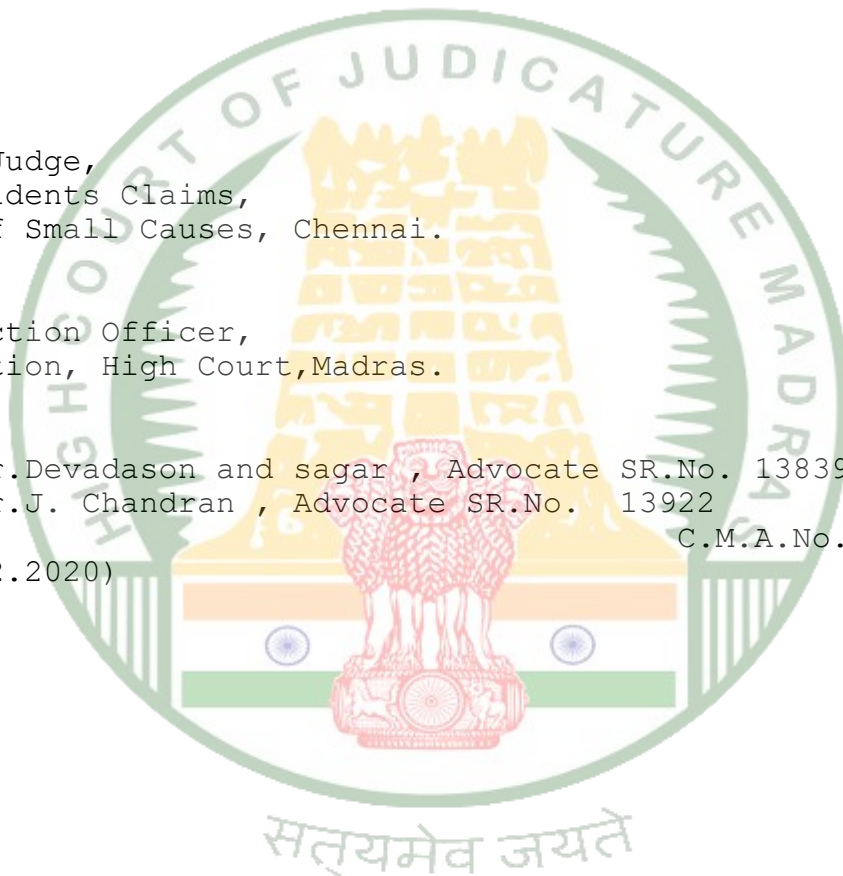
Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Devadason and sagar , Advocate SR.No. 13839

+1cc to Mr.J. Chandran , Advocate SR.No. 13922

C.M.A.No.893 of 2013

A.SK(28.12.2020)



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