

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.976 of 2016
C.M.P.No.7424 of 2016

United India Insurance Company Limited
45, Moore Street,
Chennai-600 001.

...Appellant/2nd Respondent

Vs.

1.S.Vinoth kumar
2.M.Suresh

..Respondents/Petitioner & 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 22.12.2015 passed in O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Poonamallee.

For Petitioner : Mr.D.Baskaran

For Respondents : Mr.K.Varadhakamaraj for R1

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the judgment and decree dated 22.12.2015 passed in O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Poonamallee.

2. The appeal is filed mainly on the ground that the driver, who was driving the vehicle which met with an accident, was not possessing a valid driving license and the said factum was established before the Tribunal by the Insurance Company. The driving license, which was expired, was not renewed and therefore, the Tribunal has committed an error in awarding the compensation. The Tribunal, in such cases, atleast would have considered the principles laid down by the Supreme Court in the case of Oriental Insurance Company Limited vs. Nanjappan and others and ordered for pay and recovery. Contrarily, the Tribunal has not adjudicated the issues and awarded the compensation against the Insurance Company, which is untenable.

3. The accident occurred on 31.01.2012 at about 08.30 hours at Kundrathur to Pallavaram Road, Karaima Nagar, Opposite to

Surya Travels Agency. The case was registered in Crime No.162 of 2012. The claimant sustained grievous injuries, right hand crushed injury. The factum regarding the accident was established and the existence of policy was also established. However, at the time of alleged accident, the driver of the vehicle was not possessing a valid driving vehicle and therefore, the Tribunal ought to have ordered pay and recovery and in contrary to the principles laid down in this regard, the Tribunal fixed the liability on the appellant/Insurance Company. This Court is of the considered opinion that though the appellant/Insurance Company had established that the driving license was not effective at the time of accident, the Tribunal has not considered the said ground and there is no finding to that effect. In view of the fact that the driver was driving the vehicle at the time of accident, was not possessing a valid driving license, the appellant is entitled for an order of pay and recovery in the M.C.O.P. proceedings and the Tribunal has failed to consider these aspects.

4. As far as the quantum of compensation is concerned, this Court is of the considered opinion that the nature of the injuries as well as Ex.P3 document/discharge summary discloses that the award of compensation is not excessive and in consonance with the principles. This being the factum, the award of compensation is not interfered with. However, the appellant is directed to pay the award of compensation and filed an execution petition to recover the same in the manner known to law. In this view of the matter, the award amount already deposited is permitted to be withdrawn by the first respondent/claimant with accrued interest by filing appropriate application before the Tribunal and the payments are to be made through RTGS. The appellant is permitted to file an execution petition to recover the said amount of compensation with accrued interest from the second respondent, who is the owner of the vehicle, by following the procedures contemplated.

5. With this modification, the order passed by the Tribunal in judgment and decree dated 22.12.2015 in M.C.O.P.No.199 of 2012 is modified and accordingly, Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(Subordinate Judge), Poonamallee.

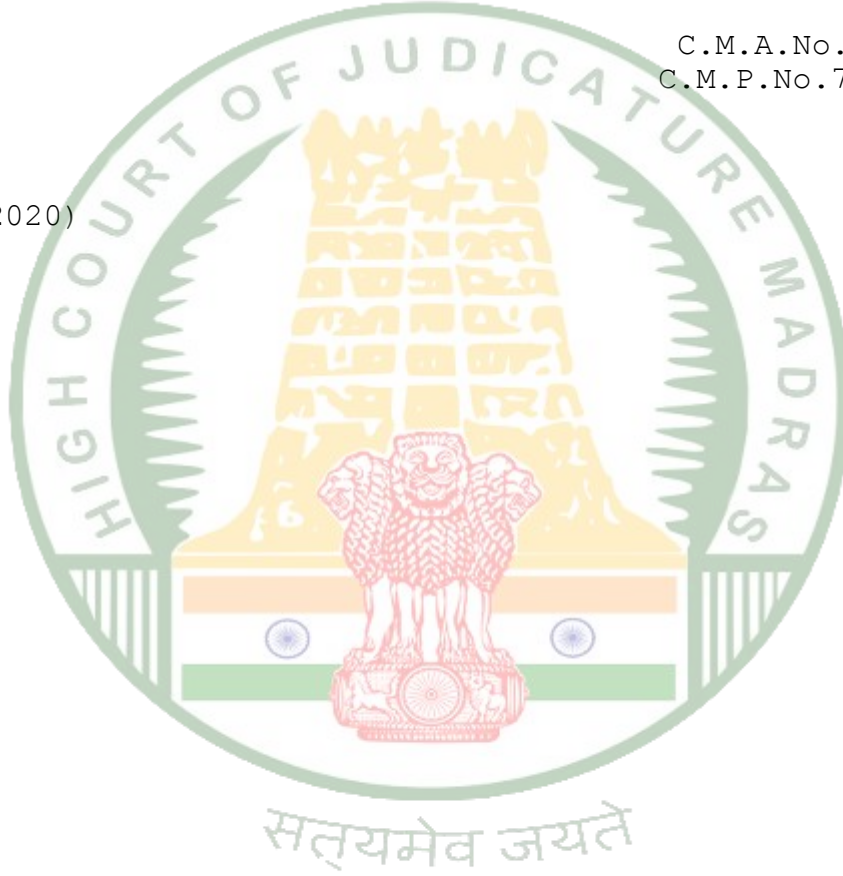
2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.D.Baskaran, Advocate sr 19681.

+1 CC to Mr.K.Varadhakamaraj, Advocate sr 19431.

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SR(CO)
SP(21/12/2020)



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