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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3619 & 3181 of 2014

&

M.P.No.1 of 2014

The Branch Manager
United India Insurance Co. Ltd.,
Nethaji Bye-Pass Road,
Dharmapuri.

...Appellant in
both Appeals/2nd Respondent

vs.

1. Elango ...Respondent in
CMA No.3619 of 2014/ Petitioner

2. Saravanan ...Respondent in
both Appeals/ 1st Respondent

3. Abilash ...Respondent in
CMA.No.3181 of 2014

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decrees dated 13.10.2011 made in MCOP Nos.580 & 125 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Dharmapuri.

For Appellant	
in both Appeals	: Mrs.I.Malar
For Respondents	
in both Appeals	: No Appearance

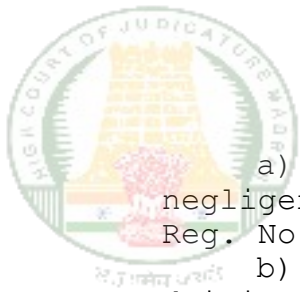
COMMON JUDGMENT

(This appeal was heard through the Video Conferencing)

These appeals have been filed challenging the common award dated 13.10.2011 passed by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate) Dharmapuri, in M.C.O.P.Nos.580 & 125 of 2008.

2. Heard Mrs.I.Malar, the learned counsel for the appellant.

3. In both the appeals, the insurance company has challenged the impugned common award on the following grounds:



a) The Tribunal ought to have fixed contributory negligence on the part of the rider of the motor cycle bearing Reg. No. TN 29 AA 3799 also.

b) The rider of the motor cycle did not possess valid driving licence at the time of accident as according to them he was possessing only a learner's licence.

c) The quantum of compensation awarded by the Tribunal to the respective claimants is excessive.

4. The first respondent in CMA No. 3181 of 2014 was the rider of the motor cycle bearing Reg.No. TN 29 H 5982 and the first respondent in CMA No.3619 of 2014 was pillion rider in the same motor cycle when the accident happened on 15.02.2007 due to collision by the insured vehicle bearing Reg. No. TN 29 AA 3799 which resulted in injuries being sustained by the respective first respondents in both these appeals. The respective first respondents in both these appeals preferred separate claims before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by them as a result of the accident caused by the vehicle owned by the second respondent and insured with the appellant. The Motor Accident Claims Tribunal under the common award dated 13.10.2011 passed in MCOP Nos.580 & 125 of 2008 directed the appellant/insurance company to pay the compensation to the respective claimants in the following manner:

MCOP.No.125 of 2008 (Claim made by the first respondent in CMA.No.3181 of 2014:

Loss of income	
3000*6	- Rs.18,000/-
Medical Expenses	- Rs.17,550/-
Nutrition	- Rs.5,000/-
Transport	- Rs.5,000/-
Pain & Suffering	- Rs.50,000/-
Disability 30% * 2000	- Rs.60,000/-
	Rs.1,55,550/-

MCOP.No.580 of 2008 (Claim made by the first respondent in CMA.No.3619 of 2014:

Loss of income	
3000 * 6	- Rs.18,000/-
Medical Expenses	- Rs.20,320/-
Nutrition	- Rs.5,000/-
Transport	- Rs.5,000/-
Pain & Suffering	- Rs.50,000/-
Disability 30% * 2000	- Rs.60,000/-
	Rs.1,58,320/-

5. Aggrieved by the common award dated 13.10.2011 passed in MCOP.Nos.125 & 580 of 2008, these appeals have been preferred by the insurance company.



6. Before the Tribunal, the respective first respondents have together filed 15 documents which were marked as Ex.A1 to Ex.A15 and 4 witnesses were examined on their side namely the first respondent in CMA No.3181 of 2014 as P.W.1, the first respondent in C.M.A.No.3619 of 2014 as P.W.2 and their respective Doctors who examined them separately as P.W.3 and P.W.4 respectively. On the side of the appellant/insurance company, three documents were filed which were marked as Exs.B1 to B3 and two witnesses were examined namely R.W.1, the RTO Official and RW2, the Insurance Company Official, before the Tribunal.

7. FIR (Ex.A1) has been registered only against the vehicle insured with the appellant. The Tribunal under the impugned award has considered the materials available on record and has rightly come to the conclusion that only due to rash and negligent driving by the rider of the Motor Cycle bearing Reg. No. TN 29 H 5982 insured with the appellant, the accident had happened. No contra evidence has been produced before the Tribunal by the appellant/insurance company to disprove the contents of the FIR (Ex.A1).

8. In all motor accident claims, adjudication is done based on preponderance of probability. When the FIR is starring at the face of the Appellant / Insurance Company and it has not been disproved by the appellant through any contra evidence, the Tribunal has rightly rejected the contention of the appellant/Insurance Company that they cannot be held liable. Therefore, the first contention raised by the appellant/insurance company with regard to their liability is rejected by this Court.

9. The second contention raised by the appellant is that the appellant/insurance company is that the rider of the insured vehicle (Saravanan) was not possessing driving licence at the time of accident and hence, they are not liable to compensate the claim. However, as seen from the exhibits marked before the Tribunal, the learner's licence of the insured (Saravanan) has been marked as Ex.B2. It is settled law that possession of learner's driving licence is sufficient to make the insurance company liable to compensate the claim as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company vs. Swaran Singh & Others reported in 2004 (3) SCC 297. The relevant portion of the decision is reproduced hereunder:

" A person holding learner's licence would also come within the purview of duly licensed as such a license is also granted in terms of the provisions of the Act and the rules framed thereunder."

10. In view of the settled position of law, the second contention raised by the appellant in these appeals is also rejected.



11. The third contention raised by the appellant is that the quantum of compensation awarded by the Tribunal to the respective first respondent in these appeals are excessive.

12. The details of the compensation awarded to the first respondent under the respective appeals have been extracted supra in paragraph 4 of this common judgment.

13. The accident happened in the year 2005. the respective claimants were technicians in a private concern. The Tribunal has fixed the notional monthly income of the respective first respondent in both these appeals at Rs.3,000/- which is a reasonable sum and there is no scope for any interference by this Court. The nature of the injuries sustained by the respective first respondents have also not been disputed by the appellant/Insurance Company as seen from the evidence available on record. The compensation awarded by the Tribunal including the compensation awarded towards pain and suffering to the respective first respondents in these appeals is also a just compensation and there is no scope for interference. Therefore, the third contention raised by the appellant in these appeals is also rejected by this Court.

14. For the forgoing reasons, there is no merit in these appeals. Accordingly both the appeals are dismissed. However, the rate of interest fixed by the Tribunal at 7.5% is confirmed. The Appellant insurance company is directed to deposit the amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and cost, after deducting the amount already deposited if any to the credit of MCOP. Nos.580 & 125 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Dharmapuri within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal is directed to transfer the respective award amount along with accrued interest lying to the credit of MCOP. Nos.580 & 125 of 2008 to the bank accounts of the respective first respondents through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,Dharmapuri.

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

C.M.A.Nos.3619 & 3181 of 2014

VG II(CO)

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A.SR(03.08.2021)