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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.452 and 453 of 2017

K.Geetha ... Appellant/Petitioner
in C.M.A.No.452 of 2017

M.V.Kothandapani ... Appellant/Petitioner
in C.M.A.No. 453 of 2017

Vs

1. M.Samraj
2. The Divisional Manager,
The Oriental Insurance Company,
"Jambu Bala Complex" Arcot Road,
Vellore - 632 004.

3. G.Jagadeesan

4. Bajaj Allianz General Insurance Company Ltd.,
New No.30, Old No.85,
1st Avenue (1st Floor)
Ashok Nagar, Chennai - 600 083.

... Respondents/Respondents in both appeals

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 04.08.2016 made in MCOP No.28 of 2012 and No.31 of 2012 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.C.Prabakaran
in both appeals

For Respondents : Mr.M.J.Vijayaraghavan for R2
in both appeals Mr.T.K.Prem Kumar for R4

COMMON JUDGMENT

Both these appeals arise out of the same accident, which took place on 14.03.2009. On that date, at about 5.15 p.m., the appellants, who are the husband and wife, were travelling in the car bearing Registration No.TN-07-L-5166 belonging to the



third respondent and insured with the fourth respondent Insurance Company, proceeding on the Chennai to Bangalore National Highways Road, near Nattrampalli Sandiyur 'U' turn. At that time, an Ape Truck bearing Registration No.TN-23-BY-1189 belonging to the first respondent and insured with the second respondent Insurance Company, came towards left side of the road in a rash and negligent manner and suddenly turned on the right hand side and due to the same, the car dashed against the said Ape Truck. Due to the said impact, the appellants sustained grievous injuries. Each of them filed claim petitions before the Tribunal claiming a sum of Rs.50,000/- individually. On consideration of the materials and evidence available on record, the Tribunal has awarded the compensation amounts as under:

CMA No.	OP No.	Amount of compensation awarded (Rs.)
452 of 2017	28/2012	20,000/-
453 of 2017	31/2012	20,000/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions. The Tribunal fixed the liability on the part of the first respondent/ owner of the vehicle and accordingly directed the owner of the vehicle to pay compensation to the claimants. Challenging the awards passed by the Tribunal, the appellants / claimants have come up with these appeals.

2.The learned counsel for the appellants has submitted that the Tribunal has erred in fixing the entire liability on the first respondent/owner of the Ape Truck, since the driver of the Ape Truck did not possess valid driving licence at the time of driving the vehicle. It is further submitted that the Tribunal ought to have directed the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle. He also submitted that the Tribunal has not considered the materials and evidence in proper perspective in awarding the compensation; that the amounts awarded towards various heads are very low and hence the same requires enhancement.

3.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has considered the materials and evidence in proper perspective and has rightly fixed the liability on the owner of the Ape Truck vehicle and has awarded the just compensation amounts, and hence the same do not require any interference in the hands of this Court.



4. Heard the learned counsel for the appellants and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

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5. A perusal of the award would reveal that Ex.P1-First Information Report was registered against the driver of the first respondent stating that he was responsible for the accident, which corroborates with the evidence of P.W.1 & P.W.2/claimants. Even as per Ex.P2-Motor Vehicle Inspector's Report, it is seen that the Ape Truck driver was negligent, which paved the way for the accident. Hence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the Ape Truck bearing Regn.No.TN 23 BY 1189 owned by the first respondent and insured with the second respondent insurance company, which finding this Court is not inclined to interfere. Further, at the time of the accident, the driver of the Ape Truck was not possessing valid driving licence to drive the vehicle. Taking note of the same, the Tribunal fixed the liability on the part of the owner of the vehicle. But, while coming to such conclusion, the Tribunal has failed to note that Ex.R1-Insurance policy covers the risk of the offending vehicle. Since the Insurance Policy covers the risk of the offending vehicle, the Tribunal ought to have directed the second respondent Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions, by not possessing the valid driving licence by the driver of the Ape Truck bearing Regn.No.TN 23 BY 1189. Accordingly, in respect of liability, the judgment passed by the Tribunal directing the owner of the vehicle to pay the compensation, is modified to the effect that the Insurance Company, shall, at the first instance, pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle (Ape Truck), the first respondent herein.

6. With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses and taking note of the injuries suffered by the claimants, awarded the above compensation amounts to the claimants and hence, the same are confirmed.

7. The second respondent Insurance Company is directed to deposit the compensation amounts along with interest and costs, as awarded by the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. On



such deposit being made, the appellants / claimants are permitted to withdraw the same on making proper application before the Tribunal.

8. Accordingly, these Civil Miscellaneous Appeals are allowed in part. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

+2cc to Mr.C.Prabakaran, Advocate Sr.30034 and 30035
+2cc to Mr.T.K.Premkumar, Advocate Sr.30374 and 30375

C.M.A.Nos.452 and 453 of 2017

vba[co]
srg 12/05/2021