

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.600 of 2017

Pavithra

... Appellant/Petitioner

Vs.

1.M.Krishnan

2.The Manager,

ICICI Lombard General Insurance Company Limited,

No.85, Wall tax road,

Elephant gate,

Chennai - 600 103.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2013 made in M.C.O.P.No.198 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruvallur.

For Appellant : Mr.M.Selvam

For R1 : Mr.E.Kannadasan

For R2 : Mr.C.Elamurugan
for Mr.K.K.Ramakrishnan

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 13.11.2013 made in M.C.O.P.No.198 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruvallur.

2.The appellant is the claimant in M.C.O.P.No.198 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruvallur. She filed the said claim petition claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her in the accident that took place on 16.09.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the 1st respondent and directed the 1st respondent, owner of the lorry to pay a sum of Rs.20,000/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant/claimant contended that the Tribunal dismissed the claim petition as against the 2nd respondent/Insurance Company holding that the driver of the Tata Ace belonging to the 1st respondent did not possess valid driving license at the time of accident. In the absence of driving license, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay compensation to the claimants at the first instance and recover the same from the owner of the vehicle. He further contended that the Tribunal erred in awarding only a meagre sum of Rs.20,000/- as compensation for the injuries sustained by the appellant. The Tribunal failed to consider and appreciate the evidence of P.W.1 and P.W.4 properly. The Tribunal ought to have awarded Rs.1,50,000/- as compensation as claimed by the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award directing the 1st respondent to pay the compensation and for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 1st respondent/owner of the vehicle contended that the Tata Ace belonging to the 1st respondent was insured with the 2nd respondent at the time of accident. Therefore, the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation to the appellant. Therefore, the award passed by the Tribunal is erroneous. In any event, the sum of Rs.20,000/- awarded by the Tribunal as compensation for the appellant for the simple injuries sustained by her is highly excessive and prayed for setting aside the portion of the award directing the 1st respondent to pay the compensation to the appellant and for a direction to the 2nd respondent to pay the compensation to the appellant.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the driver of the offending vehicle did not possess driving license at the time of

accident and hence, the 2nd respondent is not liable to pay compensation. The Tribunal has rightly appreciated the above facts in proper perspective and exonerated the 2nd respondent/Insurance Company from its liability. He further contended that the appellant sustained only simple injuries and therefore a sum of Rs.20,000/- awarded by the Tribunal as compensation to the appellant for the simple injuries sustained by her is not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st and 2nd respondent and perused all the materials available on record.

9.From the materials available on record, it is seen that the accident has occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the 1st respondent. At the time of accident, the driver of the Tata Ace did not possess driving license. It is well settled law that for not possessing driving license by the driver of the vehicle, the Insurance Company cannot be exonerated fully. The claimant who is a third party should not suffer and she must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the Insurance Company must be directed to pay the compensation to the claimant at the first instance and recover the same from the owner of the vehicle. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company, on the ground that the driver of the Tata Ace belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent/Insurance Company is directed to pay the compensation to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

10.As far as quantum of compensation is concerned, the appellant sustained only simple injuries and for the same, the Tribunal has awarded a sum of Rs.20,000/- as compensation. Therefore, the compensation awarded by the Tribunal is just and reasonable and hence, the same is confirmed.

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the amount of Rs.20,000/- awarded by the Tribunal as compensation to the appellant is confirmed. The 2nd respondent-Insurance Company is directed to deposit the amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.198 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruvallur, at the first instance and recover the same from the 1st respondent/owner of the vehicle. On such deposit, the

appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The 1st respondent is permitted to withdraw the amount, if any lying in the credit of M.C.O.P.No.198 of 2009 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruvallur, if the amount has already been deposited by him. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional District Judge,
The Motor Accident Claims Tribunal,
Tiruvallur.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.V.Manisekaran, Advocate Sr.2336
+1cc to Mr.E.Kannadasan, Advocate Sr.2374

C.M.A.No.600 of 2017

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srg 24/08/2020

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