



C.M.A.No.2357 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2357 of 2014

and

M.P.No.1 of 2014

United India Insurance Co.Ltd.,
Divisional Office No.I,
104-A, Peramanur Main Road,
Salem-7.

... Appellant

vs.

1.Gowthami @ Vaideki

2.G.Duraisamy

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 11.02.2014 in M.C.O.P.No.1744 of 2009 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, No.2, Salem.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.K.Varadha Kamaraj [R1]
R2 - Served – No Appearance



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JUDGMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, No.2, Salem in M.C.O.P.No.1744 of 2009.

2. The learned counsel for the appellant/Insurance Company would submit that the 1st respondent/claimant who was the rider of the two wheeler TVS Champ which had met with an accident did not possess a driving licence which is evident from a perusal of Ex.P3. The Tribunal has overlooked this violation of road safety Rules and has failed to fasten the liability on the 1st respondent/claimant as well.

3. As regards the quantum of compensation, the learned counsel for the insurance company would submit that though compensation has been granted under the head of permanent disability, Rs.40,000/- has been awarded under the head of loss of amenities which is on the higher side.

4. The learned counsel for the 1st respondent/claimant would submit



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that the petitioner was riding pillion which is seen from the F.I.R., and therefore, no liability can be mulcted on her and further the compensation granted was very reasonable.

5. Heard the learned counsel on either side and perused the materials on record.

6. A perusal of the claim petition in column 23 would show that the 1st respondent herself has stated that she was riding TVS Champ. Further, Ex.P3, the report of the Motor Vehicle Inspector would also indicate that the driver was the 1st respondent. Therefore, the argument of the counsel for the 1st respondent was riding pillion and not as the rider has to be rejected.

7. Considering the fact that the 1st respondent herein had driven the vehicle without a valid driving licence, 10% liability has to be mulcted on her. As pointed out by the learned counsel for the appellant/Insurance Company, a sum of Rs.40,000/- granted under the head of loss of amenities is hereby reduced to Rs.30,000/- and Rs.1,000/- is enhanced under the head of extra nourishment. In all other aspects, the award of Tribunal remains



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unaltered. Therefore, the Compensation awarded by the Tribunal is

reworked as below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Permanent disability	Rs.52,000/-	Rs.52,000/-	Confirmed
2	Pain and Sufferings	Rs. 50,000/-	Rs.50,000/-	Confirmed
3	Medical Expenses	Rs.1,02,000/-	Rs.1,02,000/-	Confirmed
4	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
5	Extra Nourishment	Rs.10,000/-	Rs.11,000/-	Enhanced
6	Attender Charges	Rs.20,000/-	Rs.20,000/-	Confirmed
7	Loss of amenities	Rs.40,000/-	Rs.30,000/-	Reduced
8	Damage to clothes and loss of income for 5 months	Rs.15,000/-	Rs.15,000/-	Confirmed
	TOTAL	Rs.3,00,000/-	Rs.2,90,000/-	
	Less 10% contributory negligence		Rs.2,90,000/- - Rs.29,000/- = Rs.2,61,000/-	

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,00,000/- awarded by the Tribunal is hereby reduced to a sum of Rs.2,61,000/-. Therefore, the Appellant / Insurance



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Company is directed to deposit the modified award amount now determined by this Court to the credit of M.C.O.P.No.1744 of 2009 on the file of the Motor Accident Claims Tribunal, the Special Subordinate Judge, No.2, Salem, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2022

Index : Yes/No
Speaking / Non-speaking order
ssn

To:
1. The Motor Accident Claims Tribunal,
Special Subordinate Judge, No.2,
Salem.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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P.T.ASHA, J.,

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