IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 1627 OF 2009
AND
M.P. NO. 1 OF 2009

M/s.Oriental Insurance Co. Ltd.
No.79, Uthamar Gandhi Road
Chennai 600 034. ... Appellant/II Respondent

- Vs -

1. Mr. C.Ravi
2. Mr. K.Nagaraj ... Respondents/Petitioner
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.08, passed by the Motor Accident Claims Tribunal (Subordinate Judge), Sankari, made in MCOP No.395 of 2006.

For Appellant : Mr. J.Chandran

For Respondents : Ms. N.Valliamma for R-1
Mr. T.R.Udayakumar for R-2

JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respective respondents.

2. The appeal has been filed by the insurer of the vehicle, viz., Oriental Insurance Company, challenging the award dated 22.09.08 passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Sankari, made in M.C.O.P. No.395 of 2006, fixing the liability on the owner, but however, directing the insurer to pay the compensation and recover the same from the owner of the vehicle.

3. It is a case of injuriy sustained by the first respondent in an accident that happened on 28.06.06. On 28.06.06, at about 09.30 a.m., when the first respondent, Ravi, was proceeding for his work from Sankari to Vadugapatti in the Bajaj Minidor van belonging to the second respondent, bearing TN-29-M-4551, the driver of the vehicle drove the van in a rash and negligent manner and while negotiating a turn, due to rash and negligence, the van upturned and, thereby, the claimant was thrown out of the van and dragged along the road and due to the said accident, the claimant suffered severe injuries as well as fractures. The claimant was taken to L.K.M. Hospital for treatment. A case was registered against the driver of the van in Crime No.759/06 under Sections 279 and 338 IPC. The first respondent herein, who suffered the accident and sustained injuries, claimed compensation in a sum of Rs.5,00,000/-.

4. In support of the claim, the first respondent examined himself as P.W.1 and Dr.R.Krishnaswamy and Anandan were examined as P.Ws.2 & 3 and Exs.P-1 to P-14 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Intimation of the Police
Ex.P-3	-	Insurance Certificate of the van TN-29-M-4551
Ex.P-4	-	Medical Bills
Ex.P-5	-	Copy of the charge sheet
Ex.P-6	-	Copy of the Judgment
Ex.P-7	-	Copy of the accident certificate
Ex.P-8	-	Copy of rough sketch
Ex.P-9	-	Motor Vehicle Inspector's report
Ex.P-10	-	Hospital Entry Register Certificate
Ex.P-11	-	Medical Bills
Ex.P-12	-	X-Rays
Ex.P-13	-	Disability Certificate
Ex.P-14	-	X-Ray

5. On the side of the respondents, viz., the owner of the vehicle and the insurer, P.Ramamurthy and C.Murugasamy were examined as R.Ws. 1 and 2 and Exs.R-1 to R-4 were marked, the details of which are as hereunder :-

Ex.R-1	-	Copy of the Learner's Licence of the Driver Saravanan
Ex.R-2	-	Advocate Intimation copy
Ex.R-3	-	Postal Acknowledgments
Ex.R-4	-	Copy of Insurance Policy

6. The Tribunal based on the oral evidence of P.W.1, the F.I.R., the order passed in the criminal case, corroborating evidence in the form of P.Ws.2 and 3 , the injuries sustained by the claimant in the accident, and the driver of the van having admitted the fact that the van upturned due to his rash and negligent driving in the criminal case and also paid fine, and also the documentary evidence adduced by the insurer that the driver of the van did not possess valid driving licence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the second respondent herein viz., the owner of the van. However, the insurer of the vehicle, the appellant herein, was directed to pay the compensation and recover the same from the second respondent, viz., the owner of the van.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, on considering the evidence, both oral and documentary, awarded compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Permanent Disability at 40%	Rs.80,000/-
2	Pain & Suffering	Rs.10,000/-
3	Extra Nourishment	Rs.5,000/-
4	Transportation Expenses	Rs.3,000/-
5	Compensation for inconvenience	Rs.5,000/-
6	Medical Expenses	Rs.82,760/-

7	Loss of Earning	Rs.22,500/-
8	Future Medical Expenses	Rs.15,000/-
	Total	Rs.2,23,260/-

In all, the Tribunal awarded a sum of Rs.2,23,260/- towards the claim as made by the first respondent along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of payment.

9. The only serious issue raised by the appellant/insurance company is that the claimant being a gratuitous passenger in the vehicle, the insurance company is not liable to pay the claim and further the driver of the vehicle not possessing valid driving licence, the order of the Tribunal directing the insurer to pay the compensation and, thereafter, recover the same from the owner of the vehicle is not sustainable.

10. Learned counsel appearing for the second respondent, viz., the owner of the vehicle, contended that the vehicle having been insured with the appellant and the insurance policy being in force, the order of the Tribunal directing the insurer to pay the sum and recover the same from the owner of the vehicle is unsustainable. Alternate submission of the learned counsel for the second respondent is that the amount awarded is on the higher side and this Court, in exercise of its appellate jurisdiction should interfere with the quantum.

11. The submission, as made by the learned counsel for the appellant though deserves acceptance, however, the order of the Tribunal cannot be found fault with, as the Tribunal has directed the insurer to pay the amount and, thereafter, recover the same from the owner of the vehicle. The Supreme Court as well as the High Courts, in a catena of decisions have followed the said ratio and this Court sees no reason to depart from the well accepted precedent.

12. Insofar as the submission of the learned counsel for the second respondent that the insurer is liable to pay the compensation, in terms of the policy conditions, this court is not in agreement with the same as the Tribunal has categorically held that the driver of the vehicle has no valid driving licence. The driver of the van having not possessed with valid driving licence, liability cannot be fastened on the insurer of the vehicle to compensate the claimant, as the same is against the policy conditions. However, on the question of quantum of compensation, this Court finds that the compensation awarded

under the head "Compensation for Inconvenience" is not warranted as the claimant has been compensated for the pain and suffering undergone by him. Further, the amount of Rs.15,000/= awarded under the head "Future Medical Expenses" also is on the higher side and, accordingly, the same is reduced to Rs.10,000/= The compensation granted under the other heads appears to be just and reasonable. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a.

13. Accordingly, the award of the Tribunal is modified as under :-

Sl. No.	Head	Amt. granted by the Tribunal	Amt. granted by this Court
1	Permanent Disability at 40%	Rs.80,000/-	Rs.80,000/-
2	Pain & Suffering	Rs.10,000/-	Rs.10,000/-
3	Extra Nourishment	Rs.5,000/-	Rs.5,000/-
4	Transportation Expenses	Rs.3,000/-	Rs.3,000/-
5	Compensation for inconvenience	Rs.5,000/-	-
6	Medical Expenses	Rs.82,760/-	Rs.82,760/-
7	Loss of Earning	Rs.22,500/-	Rs.22,500/-
8	Future Medical Expenses	Rs.15,000/-	Rs.10,000/-
	Total	Rs.2,23,260/-	Rs.2,13,260/-

The order of the Tribunal insofar as directing the insurance company to pay the amount to the claimant and, thereafter, recover the same in accordance with law, is confirmed.

14. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is reduced to Rs.2,13,260/- from Rs.2,23,260/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) This Court vide order dated 03.07.2009 had directed the appellant to deposit the entire award amount together with interest and costs less the amount already deposited.

(iv) The claimant is permitted to withdraw the amount as ordered by this Court above.

(v) The appellant insurance company is at liberty to withdraw the balance amount after adjusting the award amount as ordered above.

(vi) The appellant/insurance company is at liberty to recover the amount paid towards compensation from the owner of the vehicle in accordance with law.

(vii) There shall be no order as to costs in this appeal.

(viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1.The Subordinate Judge
(Motor Accident Claims Tribunal)
Sankari, Salem District.

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

+1cc to Mr.N.Valliamma, Advocate, S.R.No.44924
+1cc to Mr.J.Chandran, Advocate, S.R.No.45616

C.M.A. NO. 1627 OF 2009

TEJ(CO)
CA(02/11/2015)