

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

C.M.A.No.3012 of 2010

V.Chandrasekaran

... Appellant/Claimant

vs.

1.H.Abdul Kareem

2.The New India Assurance Company Limited,
Divisional Office, Officers Line,
Vellore-1.

... Respondents/Respondents.

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 13.5.2008 made in M.C.O.P.No.212 of 2007 on the file of the Motor Accidents Claims Tribunal, Vellore (Additional District and Sessions Judge, Vellore).

For Appellant : Mr.A.Prakash,
for Mr.S.Kumara Devan

For Respondents : Mr.R.Sivakumar,
for R.2

JUDGMENT

The injured claimant is the appellant herein. The present appeal is filed by the claimant against the rejection of the claim petition by the Tribunal on the ground of his violation of traffic rules.

2. The claimant has come forward with the claim petition for the injuries sustained by him in the accident occurred at 12.30 hours on 23.10.2005 involving a moped ridden by him and a passenger bus owned by the first respondent insured with the second respondent insurance company. In the counter filed by the second respondent insurance company, the cause of the accident is attributed to the rash and negligent act of the claimant. The insurance company has also in the counter called upon the claimant to prove the validity of vehicle documents such as R.C., I.C., F.C. and the driving license of the driver of the bus and valid insurance coverage for the other vehicle. (The first respondent-owner of the bus remained exparte).

3. The parties entered into trial with the above pleadings and the claimant examined himself and his Doctor as P.W.1 and P.W.2 and produced his documentary evidence as Exs.A.1 to A.6 and no oral

and documentary evidence is adduced on the side of the second respondent insurance company. The Tribunal rejected the claim petition solely on the ground that the two wheeler ridden by the claimant at the time of the accident was not insured and the claimant possessed of no driving licence and the claimant thus violated the traffic rules and is, hence, disentitled to claim any compensation.

4. In my considered view, the ground on which the claim petition was rejected by the Tribunal is totally against law as the non-observation of traffic rules will not deprive the claimant of his right to maintain any claim petition. The issue relating to non-possession of driving licence by the rider of one of the vehicles involved in the accident is relevant only while deciding the issue relating to extent of his liability to cause the accident. Otherwise, the non-possession of the driving licence by the driver of the offending vehicle is a relevant factor for deciding the liability of the insurance company to pay compensation to third party. But, the same will in no way render the claim petition not maintainable.

5. Regarding the absence of valid insurance coverage for the TVS 50 Moped, in the event of the rider of the said vehicle being held liable for the accident, the owner of TVS 50 will be liable to answer the question made by any third party and that question does not arise in the present case. As such, the impugned order rejecting the claim on the ground of violation of traffic rules by the claimant is legally unsustainable. As the Tribunal failed to go into any other issues regarding the manner and cause of the accident and the right of the claimant to get compensation and quantum of the compensation and the extent of the liability of the second respondent insurance company to indemnify the owner of the vehicle, etc. Hence, this Court feels, it is a fit case to remand the matter to the Tribunal for fresh disposal on merits.

6. In the result, the civil miscellaneous appeal stands allowed, setting aside the impugned order of the Tribunal and the claim petition is remanded back for fresh disposal on merits by the Tribunal after giving due opportunity to both the parties to adduce additional oral and documentary evidence, if need be. Having regard to the date of accident, the Tribunal is directed to dispose of the same as expeditiously as possible, not later than three months from the date of receipt of a copy of this judgment along with the records. No costs.

sbi

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Note:

1. Office is directed to send a copy of the judgment along with the case records immediately.

To

1. The Additional District and Sessions Judge,
Fast Track Court, Motor Accidents Claims Tribunal,
Vellore.

2. The Record Keeper,
V.R. Section,
High Court, Madras.

+ 1 cc to Mr.S.Kumaradevan, Advocate SR 43198

+ 1 cc to Mr.R.Sivakumar, Advocate SR 43183

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kra 20/8

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