

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.3407 of 2008

and

M.P.No.1 of 2008

1. T.R.Sivanathan

2. The Branch Manager,
National Insurance Co. Ltd.,
Erode-Sathy Main Road,
Pudupalayam,
Gobi Town and Taluk. ... Appellants/Respondents 1&2

Vs.

R.S.Shanmugam ... Respondent/Petitioner

Prayer : This Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 27.04.2006 made in MACTOP No.25 of 2005 on the file of the Motor Accident Claims Tribunal (II Additional Sub-Judge) at Gobichettipalayam.

For Appellants : Mr.K.Suryanarayanan
For Respondent : Mr.N.Manokaran

JUDGMENT

The Insurance Company is the appellant herein. The appeal is filed against the award of compensation of Rs.3,96,700/- payable with 7.5% interest as compensation to the injured claimant.

2. Though as per the cause title in this appeal the owner of the vehicle as well as the Insurance Company, who were the respondents 1 and 2 before the Tribunal are the appellants herein, no vakalat is filed by the first appellant owner either individually or jointly with the second respondent/Insurance Company. As such, the appeal filed on behalf of the first appellant/Owner is defective in nature and is dismissed in so far as the first appellant is concerned.

3. The second appellant Insurance Company did not admittedly appear before the Tribunal and contest the claim petition. The claim petition was contested only by the claimant and by the first respondent owner. The learned counsel appearing for the second appellant/Insurance Company would submit that he came to know about the claim petition only at the execution stage. But, he did not take any steps to get the award passed in his absence to be set aside.

4. Be that as it may, the Insurance Company, having remained ex parte before the Tribunal, failed to file any counter and failed to raise any plea against the claim either on the question of liability or on the quantum before the Tribunal. Whereas the learned counsel appearing for the Insurance Company would in this appeal seek to question the correctness of the award both on the question of liability and quantum, by saying that the claimant, who was the rider of the vehicle, was closely associated with the owner of the vehicle and he borrowed the vehicle from the owner and he stepped into the shoes of the owner and as the accident occurred due to his wrong riding, he is not entitled to maintain any claim petition against the owner as well as the Insurance Company.

5. The argument advanced on the side of the Insurance Company is sought to be opposed by the claimant by relying on the decision of learned brother Judge of this Court reported in 2013 1 TN MAC 685 (National Insurance Co. Ltd., D.O.II, Balaji Tower, II Floor, R.K.Road, Salem-7 vs. P.Alagesan). In the case decided by the learned brother Judge, the claimant claimed to be the Owner-cum-Driver of the vehicle and he drove the vehicle from Coimbatore to Kumarapalayam and on his way, he parked his vehicle near the showroom and when he removed and rolled down the Tarpaulin cover, he accidentally fell down from the stationary vehicle, thereby he sustained injuries and fractures and he was given treatment as inpatient and out patient and he claimed for Rs.3,00,000/- as compensation. There also, the Insurance Company raised an objection regarding the maintainability of the claim petition either under the Motor Vehicles Act or Workmen's Compensation Act. The learned brother Judge, after a detailed discussion and also after citing and discussing the decisions of the Hon'ble Supreme Court and the Division Bench of our High Court, is pleased to hold that by reason of payment of additional premium to cover the risk of the Owner-cum-Driver as done in the present case, as evident from Ex.B1-Insurance Policy, there was an implied admission on the part of the Insurance Company to pay compensation even if the owner happened to drive the vehicle at the time of accident. In para 42 of the same Judgment, the learned brother Judge referred to the Division Bench decision of our High Court in Kaliathal vs. New India Assurance Co. Ltd., reported in 2004 (1) TNMAC 135, which lays down the principle that when additional premium is paid to cover liability towards bodily injury or death of the owner of the vehicle, the Insurance Company is liable to pay compensation either to the owner, injured or to the legal representatives of the deceased owner of the vehicle. The same view is reiterated in another Division Bench judgment in the case of United India Insurance Company Ltd. vs. P.Shanthi @ P.Santhamani and others, reported in 2011 1 TNMAC 227 (DB) referred to in para-52 of the same judgment and in the case of Komeravel Gounder vs. Bajaj Allianz General Insurance Company, reported in 2013 (1) TNMAC 120(DB) referred to in para 53. The learned brother Judge, in para 54, has ultimately held that if the Owner-cum-Driver takes a personal accident cover policy, then he can maintain a claim against the insurer for

compensation. The learned brother Judge then proceeded to decide the meaning of expression "accident arising out of and use of motor vehicle" and answered in para 55 that in order to maintain claim under Section 163-A and 166 of Motor Vehicles Act, what is required is the use of vehicle when an accident had occurred irrespective of the fact, whether the vehicle is on road, driven, repaired, parked, kept, stationary or left in an unattended condition of vehicle in question. The learned brother judge, after defining an accident as mishap or an untoward happening not expected and designed to have an occurrence, is pleased to hold that the claimant/Owner-cum-Driver, having paid the additional premium and coverage, is entitled to maintain the claim for the injuries sustained by him in the accident occurred by use of the vehicle.

6. As rightly pointed out by the learned counsel appearing for the respondent/claimant, the same reason is applicable to the facts of the present case and considering the factum of the accident in the course of the use of the vehicle beyond his control and considering the capacity in which the claimant was riding the vehicle at the time of accident and the payment of additional premium/coverage for owner cum driver the claim is maintainable and any objection raised on the side of the appellant insurance company in this regard is hence not legally sustainable.

7. Regarding the quantum, the Tribunal, having regard to the age of the injured as 42 years and having regard to the nature of business carried on by him (i.e.,) saree business fixed his monthly income at Rs.3000/- as against Rs.10,000/- claimed by the injured. The Tribunal having regard to nature of the injuries sustained by him, i.e. fracture on right thigh bone, right knee, left foot and middle finger and nature and duration of the treatment undergone by him in Ganga Hospital in Coimbatore and the quantum of medical expenses as per the hospital bills and considering the degree of disability of 30% assessed by P.W.2-Doctor in his Ex.A34-Disability Certificate, was inclined to award a sum of Rs.3,96,700/- as compensation under the following heads:

Pecuniary Loss (Rs.3000 x 12 x 15 x 30%)	
Rs.1,62,000/-	
Medical Expenses	Rs.2,09,700/-
Pain and sufferings	Rs. 10,000/-
Transport to hospital	Rs. 10,000/-
Extra Nourishment	Rs. 5,000/-
Total	Rs.3,96,700/-

8. The particulars above mentioned would reveal that reasonable compensation is awarded under the heads "Pain and sufferings", "Transportation" and "Extra Nourishment". Regarding the Medical Expenses, the Tribunal has, on the basis of Exs.P6 to P16 Medical Bills relating to treatment taken in the Ganga Hospital, awarded Rs.2,09,700/- as compensation. As far as the

compensation for loss of future income is concerned, the same is awarded by considering the monthly income and loss of earning capacity and the same, cannot be found fault with.

9. In short, the learned counsel appearing for the appellant is unable to make out any ground both in law and in facts to interfere with either the award of compensation and quantum of compensation awarded by the Tribunal.

10. The learned counsel for the respondent/claimant has at this juncture raised a valid legal objection that the Insurance Company, who failed to appear before the lower Court and who failed to obtain any permission to question its liability under Section 170 of the Motor Vehicles Act, is not entitled to oppose the correctness of the award by denying the liability.

11. In the result, this Appeal stands dismissed. No costs. Consequently, connected miscellaneous appeal is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal,
(II Additional Sub-Judge),
Gobichettipalayam.

+1 cc to Mr.N.Manokaran, Advocate, sr.41811

+1 cc to Mr.K.Suryanarayanan, Advocate, sr.41761

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