BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.04.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A.(MD) No. 326 of 2014

ICICI Lombard General Insurance Company Limited,
United Arcade,
III Floor, Annamalai Nagar,
Karur Bye Pass Road,
Thillai Nagar,
Trichy ... Appellant/2nd Respondent

Vs.

1. Sakthivel

2. B. Anand ... Respondents 1&2/Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Cr.P.C. against the Judgment and Decree dated 05.09.2011 made in M.C.O.P.No.463 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kulithalai.

For Appellant : Mr.S. Srinivasa Raghavan

For Respondent : Mr. S. Deenadhayalan

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 05.09.2011 made in M.C.O.P.No.463 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Kulithalai.

2. The first respondent who is the claimant made claim for a sum of Rs.20,00,000/-, against the second respondent who is the owner of the vehicle and the appellant who is the Insurance Company.

3. According to the first respondent, on 21.08.2006, the second respondent was driving the Two Wheeler in Karur to Trichy main Road. The first respondent was a Pillion rider. The second respondent was driving the vehicle in a rash and negligent manner without following the traffic rules. At about 7.30P.M. Near Chinthalavadi, the second respondent drove the vehicle in to a pit and the accident has been occurred. The first respondent fell from the vehicle and suffered serious injuries. The first respondent was immediately admitted in Amaravathy Hospital in Karur. Thereafter, he was shifted to PSG Hospital, Coimbatore and then he was taken to Bathel Hospital, Coimbatore as in-patient and afterwards, he was taking treatment at out patient and spent Rs.2,00,000/- towards medical expenses.

4. Before the accident, the first respondent was hale and healthy. He obtained Diploma in Catering Technology from Central Government Hotel Management Institute. He was working as cook with Contractor and he was earning Rs.9,000/- per month. Because of the accident, the entire lower part of his body was paralysed and he suffered permanent disability. He cannot sit, stand, walk and run and he is bed ridden. He is not able to attend nature calls and lost his entire income and earning capacity permanently. According to the first respondent, both the appellant and the second respondent are jointly liable to pay compensation of Rs.20,00,000/- to the first respondent, in the capacity of insurer and owner of vehicle respectively.

5. The second respondent / owner of the vehicle remained ex parte before the Tribunal.

6. The appellant / Insurance Company in their counter stated that,

(i) the second respondent did not have any driving licence.

(ii) The first respondent was a pillion rider. The compensation for pillion rider was not covered in the policy. No additional premium was paid for the pillion rider of the motor cycle bearing Regn. No. TN.47 P 9443, and there is no policy coverage. Therefore only the second respondent is liable to pay compensation and appellant is not liable to pay any compensation.

(iii) The Statement of the first respondent with regard to the nature of injury, medical treatment and expenses incurred are false.

(iv) Statement of the first respondent with regard to compensation for job and loss of income etc., is excessive and first respondent is not entitled to any compensation.

(v) Section 147 of the Motor Vehicles Act, does not cover the additional premium risk coverage insured vehicle.

7. For the above reasons, the appellant prayed for dismissal of the MCOP.

8. Subsequently, the appellant filed additional counter affidavit. In the additional counter affidavit, the appellant / Insurance Company has stated that as per Medical Records issued by the PSG Hospital, Coimbatore, it is seen that the first respondent was driving the vehicle at the time of accident. The first respondent was fraudulently claiming compensation.

9. Based on these pleadings, the Tribunal framed necessary points for consideration:-

(i) the first respondent has examined himself as PW.1 and examined one Malathi as PW.2 and Doctor Selvaraj as PW.3 and marked documents as Exs.A1 to A8.

(ii) the appellant / Insurance company examined his Manager (Legal) as RW.1 and examined Doctor Sivakumar as RW.2 and marked documents Exs.B1 and B2.

10. The Tribunal after considering both the pleadings, evidence and judgments relied on by the counsel for the first respondent awarded a sum of Rs.9,40,365/- together with interest at 7.5% per annum from the date of petition till repayment and awarded cost including Rs.16,000/- as Advocate fees.

11. Against the said award, the appellant / Insurance Company has filed the present appeal.

12. The counsel for the appellant contended that,

(i) order of the Tribunal is contrary to law and against the evidence and opposed to all probabilities.

(ii) first respondent was not pillion passenger. But, actually, he was rider of the insured vehicle at the time of accident. The first respondent made a false complaint before the Police and falsely made the claim.

(iii) At the time of admission in PSG Hospital, Coimbatore it was stated by the Hospital Authority that the first respondent was driving Two Wheeler and sustained injury.

(iv) The interpretation given by Tribunal the term “riding” of Two Wheeler is strange and un acceptable.

(v) The first respondent was responsible for accident due to his own negligence and respondents herein have colluded with each other and filed false complaint as though the first respondent was a pillion passenger.

(vi) The Tribunal without any justification ignored the evidence of Doctor Sivakumar from PSG Hospital, Coimbatore.

13. For the above reasons, the appellant prayed for allowing CMA setting aside the order passed by the Motor Accidents Claims Tribunal, Sub Court, Kulithalai passed in MCOP.No.463/2007 dated 05.09.2011 granting compensation to the first respondent.

14. Per contra, the learned counsel for the first respondent / claimant contended that:

(i) first respondent was only a pillion rider and the accident took place only due to rash and negligent driving by the second respondent / owner of vehicle.

(ii) immediately after accident complaint was given to Police wherein it was stated that the first respondent was a pillion rider at the time of accident.

(iii) In the Accident Report given by the PSG Hospital, Coimbatore, it was stated that the first respondent suffered injury while riding the Two wheeler. It was not stated that the first respondent was driving Two wheeler.

(iv) the Tribunal has given a correct meaning for the term “riding” and held that the appellant / Insurance is liable to pay compensation.

(v) There is no reason to set aside the well considered order of Tribunal.

15. For the above reasons prayed for dismissal of the Appeal filed by the appellant /Insurance Company.

16. I have carefully considered the pleadings, evidence and order of Tribunal and considered the rival arguments of counsel for parties.

17. The main contention of the appellant / Insurance Company is that the first respondent was driving Two wheeler at the time of accident. This fact is borne out by Ex.B2- Discharge summary, issued by PSG Hospital, Coimbatore. This discharge summary was proved evidence of RW.1 Dr. Sivakumar, PSG Hospital. He elaborated his contention and submitted that interpretation given by the Tribunal to the term “riding” is wrong. The term “riding” will mean only driving the vehicle by a person. This contention of the appellant is untenable and un sustainable. A pillion passenger is also termed as Pillion Rider. In the discharge summary - Ex.B2, it was not stated that the first respondent was driving the vehicle. Further in Ex.A1, First Information Report which was given immediately after accident it was stated that the first respondent was pillion rider. The appellant also in the counter affidavit originally filed has stated that the first respondent was a pillion rider and the policy does not cover the pillion rider. Subsequently, appellant filed additional counter affidavit wherein they have taken a stand that the first respondent was driving the vehicle. The interpretation which appellant is giving to term 'riding' as driving is not correct. The Tribunal has rightly interpreted the term “riding” and held that the first respondent was only a pillion rider at the time of accident. This conclusion of Tribunal is correct, based on Exs.A1 and B2. Therefore, the Civil Miscellaneous Appeal is devoid of merits and is liable to be dismissed.

18. As far as quantum of compensation is concerned, first respondent has produced Salary Certificate – Ex.R1, and Ex.A6- certificate from employer. Even though first respondent has stated that he was earning a sum of Rs.9,000/- per month and produced the certificate to that effect, the Tribunal has taken salary of the first respondent only a sum of Rs.4,500/- per month. The Doctor has given a certificate due to accident he has suffered permanent disability and loss of earning capacity is 100%. The Tribunal took note of the fact that only lower part of first respondent body was paralysed and he can do work while sitting. For this reason, the Tribunal has come to the conclusion that the disability of the first respondent as 75%.

19. The Tribunal considering the second Schedule of Motor Vehicles Act and judgments of the Apex Court reported in **2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)** has concluded that compensation can be properly arrived at by multiplier method. As per the Judgment of Apex Court, multiplier is arrived at 18, taking into consideration the age of the first respondent and percentage of the disability and future loss of income. Using said multiplier, the Tribunal has arrived at compensation at Rs.7,29,000/- as follows:- (Rs.4,500 x 12 x 18 x 75/100 = Rs.7,29,000/-). Further the Tribunal has awarded Rs.27,000/- for loss of income suffered by the first respondent / claimant, Rs.89,365/- being medical expenses, and Rs. 20,000/- towards transportation and extra nourishment and Rs.75,000/- towards pain and suffering./ has been awarded by the Tribunal. Totally a sum of Rs.9,40,365/- together with interest at 7.5% per annum from the date of petition till the date of realisation has been awarded by the Tribunal as compensation.

20. The amount awarded by the Tribunal is just and proper and it is not excessive. The Tribunal has awarded correct compensation under each head following multiplier as per guidelines of Apex Court in Saralaverma case. Hence, the Civil Miscellaneous Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

21. In the result, the appeal is dismissed and the award passed by the Motor Accident Claims Tribunal / Subordinate Judge, Kulithalai is confirmed. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub- Assistant Registrar

To

The Motor Accident Claims Tribunal (Subordinate Judge),

Kulithalai

+1cc to Mr.S.Deenadhayalan, Advocate SR.No.21635

sm:12.05.2015:4P/3C

trp

C.M.A.(MD) No. 326 of 2014

23.4.2015