

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.110 of 2014

The National Insurance Company Ltd.,
Mettur Main Road
Bhavani Town
Bhavani Taluk

.. Appellant/R3

-Vs-

1. Minor P.Sreevani
on her behalf her Natural Guardian
K.Pongiyak Gounder ..R1/Petitioner
2. Andamuthu
S/o Arumugam ..R2/R1
3. V.M.Subramani ..R3/R2

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 11.9.2012 made in M.C.O.P.No.320 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Bhavani, Erode District.

For Appellant :: Mr.S.Vadivel

For Respondents :: Mr.N.Manokaran for R1
No appearance for R2 & R3

JUDGMENT

The National Insurance Company Limited, Bhavani has questioned the liability for payment of compensation of Rs.1,03,482/- along with interest at the rate of 7.5% per annum to the first respondent/claimant in the present appeal.

2. The brief facts of the case are as follows:-

A 13 year old minor girl, while returning from school on 11.3.2009 at about 5.15 P.M., in her bicycle from Kavindapady to Gobi Main road, nearby old post office, a TVS Centra motorcycle bearing Registration No.TN 33 AX 3852 driven by the second respondent with two more persons as pillion-riders dashed against the minor girl's bicycle, resultantly the school going girl sustained grievous injuries on the right temporal region and simple injuries all over the body. Immediately she was

rushed to the Government Hospital, Kavindapady and after first-aid, she was admitted in the Trust Hospital at Erode for further treatment. After registration of a case against the rider of the motorcycle bearing Registration No.TN 33 AX 3852 in Crime No.33 of 2009 for the offence under Sections 279 & 337 of IPC, which was subsequently taken on file by the learned Judicial Magistrate No.II, Gobi, the claim petition was taken up by the Tribunal.

3. While answering the first question as to who was responsible for causing the accident, the Tribunal, on the basis of the evidence adduced by P.W.1, Pongiyagounder, the father of the girl and another eye-witness Mr.Gangadaran, who was examined as P.W.2, supported by the doctor's evidence, P.W.3, which was further corroborated by the registration of the First Information Report, Ex.P1 in Crime No.63 of 2009 on the file of Kavindapady Police Station, has given a finding that the rider of the TVS Centra motorcycle bearing Registration No.TN 33 AX 3852 is responsible for the accident. On this basis, the appellant Insurance company, being the insurer of the said motorcycle, was found liable to pay the compensation. After holding the appellant liable to pay the compensation of Rs.1,03,482/-, it has also given liberty to the insurance company to recover the same from the owner of the TVS Centra motorcycle, for the reason that the rider of the motorcycle did not possess a valid driving licence.

4. Arguing further, the learned counsel for the appellant submitted that when the rider of the offending vehicle was admittedly not in possession of a valid driving licence and was also carrying two more persons at the time of accident, the act of contributory negligence ought to have been saddled on the owner of the motorcycle so as to apportion the liability equally between the insurance company and the owner of the motorcycle.

5. But this argument does not carry any weight. The reason is that even if this Court accepts the argument advanced by the learned counsel for the insurance company that the owner of the TVS Centra motorcycle is to be saddled with 50% liability, in any event, the insurance company has to first pay the compensation to the injured and thereafter has to recover the same. Therefore no purpose is going to be served by entertaining the plea in regard to the partial liability against the owner of the TVS Centra motorcycle. When the Tribunal, after answering both the negligence and liability aspects, has rightly given liberty to the appellant insurance company to pay and recover the award amount from the owner of the offending vehicle, this Court is not able to find any substance in the appeal. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Needless to state that the insurance company can resort to recover the compensation from the owner of the

offending vehicle as ordered by the Tribunal. Consequently, interim order stands vacated and the M.P.No.1 of 2014 is also dismissed. No costs.

6. Since 50% of the award amount had already been deposited, the appellant insurance company is hereby directed to deposit the balance 50% along with interest as per the award of the Tribunal to the credit of the M.C.O.P.No.320 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Bhavani, Erode District within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the first respondent/claimant to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ss

To

1. The Additional District Judge
Motor Accidents Claims Tribunal
Bhavani
Erode District

+1 cc to Mr.N.Manoharan Advocate sr 62694

+1 cc to Mr.S.Vadivel Advocate sr 62574

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