

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1045 of 2018 and
CMP.Nos.8469 & 13923 of 2018

M/s.Reliance General Insurance Company Limited,
No.2054, Raj Tower, 2nd Floor,
2nd Avenue, Anna Nagar,
Chennai-600 101.Appellant/2nd Respondent

Vs

1.Kanniammal

2.R.Murugan

...1st Respondent/Petitioner
..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.368 of 2012, dated 31.07.2017, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.K.Varadhakamaraj (for R1)

JUDGMENT

The insurance company has filed this appeal assailing the judgment and decree dated 31.7.2017 passed in M.C.O.P.No.368 of 2012 by the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

2. The appellant is the insurance company. The first respondent is the injured claimant and the second respondent is the owner of the vehicle involved in the accident.

3. The first respondent/claimant filed the claim petition stating that on 16.9.2011, at about 1800 hours, while she was walking along the Alapakkam Main Road, Krishna Nagar, near Dheen Mahal, a TATA ACE bearing registration No.TN-04-AD-6482 driven

in a rash and negligent manner hit her from behind, which resulted in her falling down and sustaining grievous injuries. The first respondent/claimant filed claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Vehicles Rules seeking Rs.6 lakhs as compensation for the injuries sustained by her.

4. The second respondent/owner of the vehicle was set ex parte before the Tribunal. The appellant/insurance company contested the claim petition by filing a detailed counter affidavit, inter alia, disputing the age, occupation, income and the manner of accident. It is pleaded that the quantum of compensation claimed is highly excessive. It was also stated that the first respondent/claimant was solely responsible for the accident and it was further stated that the vehicle involved in the accident was not insured and the driver was not having valid and effective licence.

5. Before the Tribunal, three witnesses were examined on the side of the first respondent claimant, being P.Ws.1 to 3, and fourteen documents were marked as Exs.P1 to P14. On the side of the appellant insurance company, one witness was examined as R.W.1 and four documents were marked as Exs.R1 to R4.

6. The Tribunal after analysing the oral and documentary evidence held that the accident had occurred due to the rash and negligent act of the driver of the TATA ACE bearing registration No.TN-04-AD-6482. Further, the Tribunal taking note of the fact that the driver had no valid driving licence to drive the said vehicle and had thereby committed a breach of the policy conditions, directed the appellant insurance company to pay the compensation and recover the same from the second respondent/owner of the the vehicle. In effect, the Tribunal awarded a sum of Rs.4,40,000/- as just compensation to the petitioner.

7. Calling in question the said award, the appellant/insurance company has filed this appeal.

8. The learned counsel appearing for the appellant/insurance company contended as under:

- i. Even though the Tribunal found that the driver of the vehicle involved in the accident did not possess valid driving licence, it had erroneously fixed the liability on the appellant/insurance company;
- ii. The compensation awarded by the Tribunal is exorbitant and in any way not commensurate with the injuries sustained by the first respondent claimant; and

iii. The Tribunal erred in awarding compensation by adopting multiplier method for loss earning.

9. Per contra, the learned counsel appearing for the first respondent/claimant reiterated the reasons that weighed with the Tribunal in passing the impugned order and prayed for dismissal of the present appeal.

10. I heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.K.Varadhakamaraj, learned counsel for the 1st respondent and perused the documents available on record.

11. As the mode of accident is not seriously disputed before this Court, the appeal is restricted to consider the quantum of compensation to be awarded.

12. The Hon'ble Supreme Court in *Jawahar Singh v. Bala Jain and others*, reported in (2011) 6 SCC 425, while dealing with a case where the driver had no valid and effective driving licence, approved the findings of the Tribunal and the High Court in applying the doctrine of pay and recover. It held as follows:

"11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and accordingly, directed the Insurance Company to pay the awarded amount to the awardees and thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same."

13. This Court in a series of decisions had taken similar view and this Court does not find any reason to take a different view. In view of the decision of the Supreme Court, referred supra, to meet the ends of justice, in my considered view, the Tribunal was justified in passing an order directing the Insurance Company to pay the compensation awarded and recover it from the owner of the vehicle.

14. Apropos of the amount awarded towards compensation, it is seen from the award of the Tribunal that the Tribunal awarded

Rs.3,000/- for each percentage of disability and arrived at compensation for disability to the tune of Rs.1,80,000/-, i.e., for 60% disability (Rs.3,000 x 60%). The Tribunal awarded Rs.60,000/- under the head "Pain and Suffering".

15. Considering the evidence of P.W.1 to the effect that she is earning Rs.300/- per day by flower vending and the fact that from 16.9.2011 to 15.12.2011, i.e., for almost three months after the accident, the petitioner could not have attended her work, the Tribunal following the decision of the Hon'ble Supreme Court in Syed Sadiq and others v. Divisional Manager, United India Insurance Co. Ltd., reported in (2014) 2 SCC 735, fixed the notional income of Rs.6,500/- per month and held that the first respondent claimant is entitled to Rs.19,500/- towards loss income.

16. Apart from the amounts awarded under the above said heads, which, in my considered opinion, have rightly been awarded, the Tribunal had awarded sums towards transportation to hospital, extra-nourishment, medical expenses, etc., which warrant no interference.

17. For the foregoing reasons, this Court finds no justifiable reason to interfere with the award passed by the Tribunal. The appeal is dismissed. The first respondent claimant is permitted to withdraw the entire award amount. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.

2. The Section officer, VR Section, High Court, Madras 104.

+1 CC to Mr.M.B.Gopalan Associates sr 77746

+1 CC to Mr.K.Varadhakamaraj, Advocate sr 57022.

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SP(07/03/2019)