IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 10.10.2018

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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2071 of 2007
and
MP.No.1 of 2007

National Insurance Company Ltd.
403, Mettur Road, Bhavani,
Erode District. ... Appellant/2nd Respondent

Versus

1. R.Madeshwari ..1st Respondent/Petitioner
2. S.Perumal ..2nd Respondent/2nd Respondent
3. A.Thangavel ..3rd Respondent

(Causetitle amended by impleading A.Thangavel as 3rd respondent vide Order of the Court dated 01.11.2010 made in MP.No.1of 2010

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 29.11.2006 made in O.P.No. 107 of 2006 on the file of the Motor Accidents Claims (Fast Track Court No.4) Bhavani, Erode District.

For Appellant : Mr. D. Bhaskaran

For Respondents : Mr. N. Manokaran

JUDGMENT

This appeal has been filed by the Insurance Company against the award and decree dated 29.11.2006 made in M.C.O.P.No. 107 of 2006 on the file of the Motor Accidents Claims (Fast Track Court No.4) Bhavani, Erode District questioning the liability to pay the compensation to the claimants / first respondent in this appeal, interalia, the quantum of compensation awarded by the Tribunal in her favour as well.

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

The first respondent herein has filed the claim petition in MCOP No.107 of 2006 contending that on 17.09.2003, at about 8.30 p.m., while, she was walking on Appakudal road, near Sabari Dying to attend her employment in the night shift, the vehicle bearing Registration No.36 C 9150 was driven by the second respondent herein viz., Perumal negligently and hit her, with the result, she sustained injuries on her right leg, right eyebrow and right hand. According to the first respondent in this appeal, she was the only bread winner in her family. Being a widow, she has to take care of her two children. By virtue of the injuries sustained in the accident she had lost her employment and therefore, she prayed for compensation of Rs.3,00,000/-.

3. The insurance company contested the claim petition denying the liability of compensation to the claimant. According to the insurance company, at the time of accident, the first respondent in the claim petition, who drove the vehicle was not in a possession of valid and effective driving licence to drive the Bajaj M-80 motor cycle. The owner of the vehicle namely the second respondent in the claim petition has permitted the first respondent to drive the vehicle without any valid driving licence. When there is violation of policy condition, the insurance company cannot be mulcted with the liability to pay the compensation amount. The insurance company also denied the age, occupation and other details furnished by the claimant in the claim petition. The insurance company, therefore prayed for dismissal of the claim petition.

4. Before the Tribunal, the claimant examined herself as PW1, along with Dr. Krishnaswamy as PW2. She marked Exs. P1 and P2 on her side. On the side of the Insurance Company, the Driver of the vehicle, namely Perumal was examined as RW1 and one Mohan was examined as RW2. The Tribunal considering both the oral and documentary evidence held that the accident was caused due to the rash and negligent driving of the first respondent. Therefore, the respondents are jointly and severally liable to pay the compensation amount.

5. The Tribunal taking into consideration the evidence of the Doctor PW2, and the medical records produced by the claimant has come to the conclusion that the claimant has sustained permanent disability. Taking note, of the age of the claimant at the time of accident as 53, the Tribunal proceeded to award a sum of Rs.1,17,400/- as total compensation, under the following heads :

		Rs.
Loss of income	:	10,000/-
Transport	:	2,600/-
Extra Nourishment	:	3,000/-
Medical expenditure	:	25,000/-
Pain and sufferings	:	12,000/-
Permanent disability @ 30%	:	64,800/-
		1,17,400/-

6. The Insurance company has filed this appeal mainly contending that at the time of accident, the Driver of the M-80 Bajaj vehicle was not in possession of valid Driving Licence to drive the vehicle. Conveniently, the owner of the vehicle namely Mr.Mohan did not participate in the trial and remained ex-parte. When there is violation of policy condition, the insurance company cannot be called upon to pay the compensation amount to the claimant. Even otherwise, the first respondent who drove the vehicle himself has admitted that he was not in a possession of a valid Driving Licence, to drive the vehicle. At the time of accident, he was permitted by the owner of the vehicle to drive the vehicle. In such circumstances, the owner of the vehicle as well as the driver of the vehicle ought to have been directed to pay the compensation amount to the claimant. The learned counsel for the insurance company also contended that the injuries said to have been suffered by the claimant are not such that they warrant a sum of Rs.1,17,400/- towards compensation. Thus, according to the learned counsel for the insurance company, the compensation awarded in favour of the claimant was excessive and onerous.

7. The learned counsel appearing for the claimant/first respondent would contend that the claimant was 53 years at the time of accident. She was a widow and she has to cater to two children. She was employed in a private company viz., K.P.K.N. Textiles and she was earning a sum of Rs.3,000/- p.m. In the accident, the claimant sustained grievous fracture injury in her right hand and right eye brow. For such injuries she had taken treatment from 17.09.2003 to 16.10.2003 for about two months in Government General Hospital, Erode. The injuries sustained by her has resulted in deprivation of her income for a considerable length of time, Even now the claimant could not discharge her work as before. The Doctor, who was examined on behalf of the claimant had assessed the disability at 30%. Taking into account, the above, the Tribunal has awarded a very reasonable amount and it does not require any interference by this Court. As regards the claim of the appellant that they are not liable to pay the compensation, the amount the Tribunal

in fact directed the appellant to pay the compensation for and on behalf of the respondents 1 & 2 in the claim petition by specifically observing that there is a violation of policy condition. Even if there is a violation of policy condition, the Insurance Company has to pay the compensation amount to the claimant and thereafter, recover it from the owner and driver of the vehicle, for the violation of policy condition committed by them, however, the claimant cannot be made to suffer.

8. The main grievance of the insurance company is that there is a violation of policy condition by the owner or driver of the vehicle and therefore, they cannot be called upon to pay the compensation amount. It is no doubt true that in the present case, the driver drove the two wheeler M-80 Bajaj vehicle and caused the accident however, at the time of the accident, the driver was not in possession of a valid driving licence. At the same, as rightly pointed out by the learned counsel for the first respondent/claimant, for the negligence or statutory violation committed by the owner or driver of the vehicle, the claimant cannot be deprived of her legitimate compensation amount. Hence, this Court is of the view that insurance company can pay the compensation amount to the claimant and thereafter recover it from the driver or owner of the vehicle as has been directed by the Tribunal.

9. As regards, the quantum of compensation awarded by the Tribunal, this Court finds that the claimant was 53 years at the time of accident and she was hospitalised for about 2 months. The Tribunal has awarded a reasonable compensation of Rs.2,600/- towards transportation, Rs.3,000/- for extra nourishment, Rs.12,000/- towards pain and suffering and Rs.25,000/- towards medical expenditure. For disability, the Tribunal, having regard to the fact that the Doctor, PW2 examined on her behalf has assessed the disability at 30% awarded by taking of Rs.2,000/- per percentage of disability and arrived at a sum of Rs.64,800/-. This Court finds that the compensation as awarded by the Tribunal is quite proper and reasonable and this Court is not inclined to interfere with the same.

10. In the result, the award and decree dated 29.11.2006 made in M.C.O.P.No. 107 of 2006 on the file of the Motor Accidents Claims (Fast Track Court No.4) Bhavani, Erode District is confirmed. The Civil Miscellaneous Appeal is ordered in so far as it relates to the right of the insurance company to pay the compensation amount to the claimant and to recover it from the owner and driver of the vehicle jointly and severally.

11. The insurance company is permitted to proceed for recovery of the compensation amount from the owner and driver of the vehicle in the same proceedings. The Insurance company is

directed to deposit the entire award amount to the credit of MCOP No.107 of 2006 on the file of the Motor Accidents Claims tribunal (Fast Track Court No.4), Bhavani, Erode District, with accrued interest after adjusting the amount if any already deposited within four weeks from the date of receipt of a copy of this judgment and on such deposit, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants, through RTGS, within a period of two weeks thereafter.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To
1.The Additional District Judge
Motor Accidents Claims
(Fast Track Court No.4) Bhavani,
Erode District.

2. The Section Officer, VR Section,
High Court, Madras.

+1 CC to Mr.N. Manokaran, Advocate sr 70320.
+1 CC to Mr.D. Bhaskaran, Advocate sr 70395.

C.M.A.No.2071 of 2007

SVI(CO)
SP(17/10/2019)