

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.12.2018

DELIVERED ON 18.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3043 of 2010 and
CMP No.1 of 2010

The New India Assurance Company Limited
Officer Line, Vellore. ... Appellant / 2nd respondent

Vs.

1. Venkatesan ... 1st respondent/ Claimant

2. Karthikeyan ... 2nd respondent/1st respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 30.11.2009 passed in M.C.O.P.No.379 of 2002 by the Additional Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Thiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance

J U D G M E N T

The New India Assurance company Limited, Vellore, the 2nd respondent in MCOP No.379 of 2002 on the file of the Additional Subordinate Judge, Thiruvannammalai has filed the present appeal under Section 173 of the Motor Vehicles Act, 1985 against the order dated 30.11.2009 passed in the above claim petition.

2. The first respondent/ claimant filed a claim petition under Section 166 of the Motor Vehicles Act in MCOP No.379 of 2002 before the Additional Subordinate Judge, Motor Accident Claims Tribunal, Thiruvannamalai seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 05.03.2001. According to him, when he was riding his bicycle along Keezkaripur road, Thiruvannamalai, a motorcycle bearing registration No.C- 3931

ridden by its rider rashly and negligently hit the bicycle as a result whereof, he sustained injuries all over his body. His further contention is that he sustained a fracture on his right thigh and was hospitalised continuously for a period of 25 days. His specific contention is that he was an agricultural labourer and was also doing part-time job in a post office and that he is unable to do any work as before on account of the accident.

3. The owner of the two-wheeler, the 2nd respondent herein did not appear before the tribunal and therefore, he was set exparte. The present appellant contested the claim petition.

4. The learned Additional Subordinate Judge, Motor Vehicle Accident Claims Tribunal, Thiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.57,000/- together with interest at the rate of 7.5% per annum and directed both the owner of the two-wheeler and the present appellant, insurer of the said two-wheeler to pay the compensation jointly and severally.

5. Mr.Krishnamoorthy, learned counsel appearing for the appellant would contend that the tribunal should have directed the appellant to pay the award amount in the first instance and recover the same from the owner of the two wheeler, since the rider of the two wheeler was not in possession of a valid driving licence on the date of accident. He also contended that notices were issued to owners as well as the rider of the two wheeler requesting them to produce the driving licence as evidenced by Ex.R2 to Ex.R4 and that though they were in receipt of the said notices, did not produce the driving licence. His specific contention is that the tribunal has wrongly come to a conclusion that since the motorcycle bearing registration No.C-3931 is a TVS Scooter with 49CC capacity, no driving licence is required.

6. The tribunal has observed that as per Section 4 of the Motor Vehicles Act 1988, a person below the age of 16 years can ride a two wheeler having capacity less than 50 CC and therefore, no driving licence is required as far as the present case is concerned. It is relevant to extract Section 4 of the Motor Vehicles Act 1988.

Age limit in connection with driving of motor vehicles. -

(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that 8 [a motor cycle with engine capacity not exceeding 50 cc] may be driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

7. Actually Section 4 of the Motor Vehicles Act deals with the age of the person, who can drive a motor vehicle in a public place. Nowhere in Section 4 of the Motor Vehicles Act, it is stated that driving licence is not required for driving a two wheeler having a capacity of 49CC.

Section 2(28) of Motor Vehicles Act reads as follows.

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4 [thirty cubic centimeters] ;

Therefore, it is clear that a driving licence is necessary for riding a two-wheeler, which has 49 CC capacity. At present, certain electric bikes fall under exempt category from possessing a valid driving licence on account of power less than 250 watt and minimum speed less than 25 kmph.

8. The tribunal is therefore, wrong in fastening liability on the part of the appellant to pay the compensation amount jointly and severally. As per the decision in Oriental Insurance Company Vs. Nanjappa and others reported in 2005 SCC (cvi) 148, the appellant Insurance company should pay the compensation amount in the first instance and then recover the same from the owner of the two wheeler in the same proceedings.

9. In the result,

(i) The appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld and the appellant/insurance company is

directed to deposit the compensation amount as awarded by the tribunal, less the amount already deposited, within a period of 4 weeks from the date of receipt of a copy of this order and then recover the same in the same proceedings.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst
To

The Additional Subordinate Judge,
Motor Vehicle Accidents Claims Tribunal,
Thiruvannamalai.

Copy to

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.88431

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