IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1640 of 2011
and M.P.No.1 of 2011

M/s.United India Insurance
Company Limited
Motor Third Party Claims Office
South India Co-op Building III Floor
No.38, Anna Salai, Chennai-2 ...Appellant/
2nd respondent.

vs

1.G.Sridhar (Minor)
Rep. By his mother and next friend
Sumathi ..1st respondent/Petitioner

2.M.Raja ..2nd respondent/
1st respondent.

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.02.2011 made in M.C.O.P.No.3332 of 2006 on the file of Motor Accident Claims Tribunal, (Court of Small Causes-III), Chennai.

For appellant : : Mr.J.Michael Visuvasam

for Respondents : : Mr.R.Manoranjitham for R1.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance company, challenging the judgment and decree dated 02.02.2011 made in M.C.O.P.No.3332 of 2006 on the file of Motor Accident Claims Tribunal, (Court of Small Causes-III), Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The averments in the claim petition in MCOP.No.3332 of 2006 is that on 25.01.2006 at 11.00 a.m, while the minor petitioner viz., G.Sridhar, was standing at the edge of the road

in West Koovum salai, Chinthadripet, an autorickshaw bearing Reg.No.TN-04-Y-6555 came at high speed, dashed against the petitioner, causing him multiple fractures and grievous injury all over his body. The petitioner was aged 11 years and was working as Auto Mechanic earning Rs.100/- per day. Due to the injury suffered, he is not able to attend to any work. Hence, the petitioner seeks a sum of Rs.2,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. Opposing the claim of the Petitioner, by filing counter, the 2nd respondent Insurance company contends that the driver of the 1st respondent vehicle was not having valid driving licence and as such the insurance company is not liable to pay any compensation. The claim of the petitioner about the nature of injury, age, occupation and income are all denied. The 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, P.W.1 and P.W.2 was examined and documents Ex.P.1 to Ex.P.4 was marked on the side of the Petitioner. On the side of the respondent, R.W.1 and R.W.2 deposed and produced documents Ex.R.1 to Ex.R.5. The Tribunal, on the basis of available evidence, found that the negligence on the 1st respondent auto driver alone caused the accident and awarded a sum of Rs.1,01,000/- as compensation to the petitioner. Being aggrieved over the said conclusion of the Tribunal, the 2nd respondent/ insurance company has come forward with the present appeal.

5. The learned counsel for the Appellant/2nd respondent-Insurance company contends that the award passed by the Tribunal is not in accordance with law. The Tribunal erred in directing the insurance company to pay compensation while the driver of the auto was not having valid licence. The fact of owner and driver of the vehicle remaining absent inspite of notice served on them was not considered by the tribunal. The amount awarded by the tribunal under various heads is exorbitant. Hence, the 2nd respondent sought to entertain the appeal and to dismiss the claim of the petitioner.

6. On the other hand, the learned counsel for the 1st respondent/injured minor petitioner contends that the tribunal after considering the available evidence on record, has passed the just and fair compensation. There is no ground made out to interfere with the award passed by the Tribunal. Hence, the 1st respondent herein/petitioner sought for dismissal of the appeal.

7. The petitioner examined mother of the minor petitioner as P.W.1 and she stated that the accident occurred only due to

the negligence of the 1st respondent auto driver. The petitioner produced Ex.P.2-charge sheet laid against the 1st respondent vehicle driver. The Sub-Inspector of Police who deposed as R.W.1 also admitted that the accident occurred due to negligence of the 1st respondent vehicle driver only. Further, the petitioner being the minor child, the issue of negligence on his part will not arise. Thus, on the basis of P.W.1 evidence as well as Ex.P.2 charge sheet, it is clear that the accident occurred only due to negligence of the 1st respondent driver.

8. The minor Petitioner suffered fracture of both bone in the left leg; fracture of left side hip bone and abrasion all over the body. Discharge summary issued by the Government Hospital is marked as Ex.P.1 in which the fracture suffered by the petitioner is clearly mentioned. It is clear from Ex.P.1-Discharge summary that the minor petitioner was aged 11 years. The mother of the petitioner who deposed as P.W.1 stated that her son, by working as auto mechanic was earning Rs.100/- per day. Due to fracture, the minor petitioner is not able to attend to his work. The doctor who deposed as P.W.2 clearly stated about the fracture suffered by the minor petitioner in both bone of left leg and fracture of 4, 5, 6 rib bones and opined that disability suffered by him in the left leg is 25% and disability for rib bones is 10%. Hence, the doctor assessed the partial permanent disability at 35%. In the absence of any contra evidence, following the decision of this court reported in 2017 (1) TNMAC 251 [P.Elangovan Vs. S.Murali and others], fixing of disability at 35% by the Tribunal is found to be just and proper. The Tribunal has rightly awarded compensation for the same at Rs.2000/- per percentage. The injured being the minor has suffered fracture and the bones are malunited and due to that he is having pain. In such circumstances, considering the nature of injury and period of treatment and other attendant circumstances, this court is of the view that the amount awarded by the Tribunal as compensation amounting Rs.1,01,000/- is just and proper.

9. The appellant/2nd respondent-Insurance company contended that the vehicle involved in the accident is not insured with them and since the driver was not having valid driving licence, they are not liable to pay any compensation.

10. It is clear from Ex.R.5 copy of Insurance Policy that the vehicle was insured with the 2nd respondent. It is clear from Ex.P.2 charge sheet that the driver of the offending vehicle was not charged for not possessing valid driving licence. The person who deposed as R.W.2 stated that he did not examine the RTO regarding the driving licence possessed by the 1st respondent vehicle driver. The 2nd respondent-Insurance company claims that the notice sent by them to the owner and driver of the 1st

respondent is returned unserved and as such, it is to be presumed that the driver was not possessing valid driving licence. However, the return of notice alone cannot be a ground to accept the contention of the 2nd respondent-Insurance company. As the driver of the 1st respondent vehicle was not charged for the said offence in charge sheet laid against him, the contention of the 2nd respondent that the vehicle was allowed to be operated by the first respondent by a person not possessing valid driving licence amounting to violation of Policy condition, cannot be accepted. In such circumstances, the contention of the Petitioner that the vehicle was driven by a person who possessed valid driving licence has to be accepted. For the above said reasons, this court comes to the conclusion that the offending vehicle driver was having valid insurance coverage and the driver of the offending vehicle possessed valid driving licence and as such, the claim of the appellant/2nd respondent-Insurance company, to entertain the appeal and to set aside the award passed by the Tribunal is not sustainable.

11. In the light of the above reasonings, the Civil Miscellaneous Appeal is devoid of merits and is accordingly dismissed. The award passed by the Motor Accident Claims Tribunal, Court of Small Causes-III, Chennai, dated 02.02.2011 in M.C.O.P.No.3332 of 2006, is confirmed. The Appellant/2nd respondent/Insurance Company is directed to deposit the award of Rs.1,01,000/- along with the proportionate accrued interest and costs, less the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. The 1st respondent/Petitioner, on attaining the age of majority shall be permitted to withdraw the award amount along with accrued interest, by following the due procedure before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

nvsri

To

1. The Judge, Court of Small Causes-III,
   Motor Accident Claims Tribunal, Chennai.

Copy To

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

+1cc to Mr.J.Michael, Advocate SR.No.19966
+1cc to Mr.R.Manoranjitham, Advocate SR.No.19538

GN(03/07/2018)