

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1908 of 2016
and
CMP.No.15346 of 2017

The Divisional Manager,
Bharti AXA General Insurance Co. Ltd.,
Divisional Office, SDF Park Circus,
Kolkata, West Bengal-700 016.

.... Appellant/2nd respondent

..vs..

1.Muniappan 1st respondent/Petitioner
2.S.Gangadharppa 2nd respondent/1st respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 29.01.2016 made in MCOP.No.166 of 2015 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri.

For Appellant : Mr.Srinivasan Ramalingam

Respondents : Mr.C.Prabakaran for R1

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 29.01.2016 made in MCOP.No.166 of 2015 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 12.11.2013, while the petitioner was riding the Motor Cycle bearing Registratioin No.TN-24-K-8978 along with a pillion rider, in Hosur to

Krishnagiri Road, at about 9.55 a.m., while going near Kakkanapuram "U" turn, the first respondent's car bearing Registration No.KA-40-A-0055 insured with the second respondent, came at high speed, driven in a rash and negligent manner, dashed on the motor cycle and due to the impact, the petitioner Muniappan and the pillion rider, namely, Sankar sustained grievous injuries. The accident occurred due to the rash and negligent driving of the first respondent car driver only. The petitioner suffered lacerated wound in occipital region, Abrasion over left frontal region, Abrasion over bridge of nose, Laceration over lower lip, Abrasion over right fore arm, Abrasion wound over lower third left leg, Abrasion over left knee, Abrasion over right knee and multiple grievous injuries all over the body. The petitioner was aged 22 years and by doing agriculture work and milk vending business was earning Rs.10,000/- per month. Due to the injuries suffered, the petitioner suffered permanent disability, which prevents him from carrying on his normal avocation resulting in loss of earning. Thus, the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4.On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. At the time of accident, the car bearing Registration No.KA-40-A-0055 was proceeding from Hosur to Krishnagiri and at that time, the two wheeler bearing Registration No.TN-24-Y-8978 suddenly crossed the Kakkanapuram "U" turn without any signal or indication and dashed on the first respondent car inspite of best efforts taken by the car driver to avert the accident. The rider of the two wheeler alone was responsible for the accident. The rider of the two wheeler did not possess valid driving licence. The second respondent disputed the claim of the petitioner about the age, avocation and income of the injured petitioner. The amount claimed by the petitioner is highly excessive. Thus, the second respondent Insurance Company sought for dismissal of the petition.

5.Before the Tribunal, the petitioner examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P7 to prove his claim. The second respondent examined R.W.1, produced Ex.R1 to Ex.R5 to contradict the claim of the petitioners.

6.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent car driver only caused the accident, passed an award for a sum of Rs.3,49,000/- as compensation to the petitioner. However, as the first respondent car was not having valid permit to operate in the State of Tamil Nadu, the Tribunal held that the first

respondent has committed violation of policy condition and directed the second respondent to pay the entire award amount at first and then to recover the same from the first respondent/owner of the car. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the negligence on the first respondent car driver. The Tribunal failed to consider the fact that the owner and insurer of the Motor Cycle bearing Registration No. TN-24-K-8978 involved in the accident are necessary parties to the case. The Tribunal failed to appreciate the fact that as the rider of the two wheeler was entering the National Highway from side road and he ought to have given way to the vehicles proceeding along the main road. The Tribunal ought to have held that the rider of the two wheeler guilty of contributory negligence. The rider of the two wheeler has not produced his driving licence and the same is evidenced by Motor Vehicle Inspector's report. The Insurance certificate of the two wheeler was not produced for verification. The amount awarded by the Tribunal under different heads is on the higher side and the same is liable to be reduced. Thus, the appellant/2nd respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the first respondent/claimant contends that the petitioner is no way responsible for the accident. The petitioner has suffered multiple grievous injuries all over the body, the disability suffered by the petitioner was correctly assessed by the Tribunal and passed just and reasonable Award. The Award passed by the Tribunal is based on proper appreciation of the evidence and there is no ground made out to interfere with the same. Thus, the petitioner/claimant sought for dismissal of the appeal.

10. The petitioner who deposed as P.W.1 clearly stated that he was riding the two wheeler which met with an accident. The eye witness to the accident who deposed as P.W.3 clearly stated that on 12.11.2003, while he was standing in Kakkanapuram "U" turn around 9.55. a.m., in Hosur to Krishnagiri Highway, the two

wheeler bearing Registration No.TN-24-K-8978 came at normal speed and at that time, a car bearing Registration No.KA-40-A-0055 came at high speed from Hosur to Krishnagiri and dashed on the two wheeler resulting in the rider of the two wheeler as well as pillion rider being thrown out. Both the persons suffered injuries. According to P.W.3, the accident occurred only due to the negligence of the first respondent car driver only. The Sub Inspector of Police, Guruparapalli Police Station have registered Ex.P1 First Information Report against the first respondent car driver only. Subsequently, the police altered the First Information Report as per Ex.P3 and after completing of investigation laid the charge sheet against the first respondent car driver only. The same is evident from deposition of P.W.3. Thus, it is clear from the eye witness account of P.W.3 and the contents of Ex.P1 First Information Report that the accident occurred due to the negligence of the first respondent car driver only. The same is corroborate by rough sketch of the spot.

11.On the side of the respondents, the staff of the appellant-Insurance company was examined as R.W.1. The person who deposed as R.W.1 stated that he knew about the accident from the records but has not stated anything about the manner in which the accident occurred. Likewise, the person who deposed as R.W.2 also has not witnessed the occurrence and has not stated any thing about the manner of the accident. Thus, there is no contra evidence let in by the second respondent to disprove the evidence of P.W.2 and 3 about the manner in which the accident occurred. Thus, it is clear from the oral and documentary evidence available on record that the negligence of the first respondent car driver alone caused the accident.

12.The petitioner stated that he suffered lacerated wound in occipital region, Abrasion over left frontal region, Abrasion over bridge of nose, Laceration over lower lip, Abrasion over right fore arm, Abrasion wound over lower third left leg, Abrasion over left knee, Abrasion over right knee and multiple grievous injuries all over the body. The petitioner further stated that in the accident, he suffered multiple grievous injuries and underwent treatment in the private clinic at Krishnagiri. The petitioner stated that he was aged 22 years. It is evident from Ex.P2 wound certificate issued by the Government Hospital, Krishnagiri that the petitioner suffered multiple injuries, in which the injury No.6 alone is grievous injury. According to the petitioner, he finds difficulty in sitting down and he is unable to lift or carry any weight. The petitioner also stated that he is not in a position to ride any two wheeler and he is suffering from loss of memory, frequent headache and giddiness. This, the petitioner has affected his working capacity causing loss of income to him.

13.To prove the permanent disability suffered by him, the petitioner examined P.W.2 Doctor who assessed the disability suffered by the petitioner and issued disability certificate Ex.P7. The said Doctor while deposing as P.W.2 stated that on physical examination of the petitioner and also going through Ex.P2 wound certificate, Ex.P3 discharge summary, he assessed the disability suffered by the petitioner at 45%. The X-ray taken by him is produced as Ex.W1. Further P.W.2 also stated that due to the fracture suffered by the petitioner in his left leg, the movement of left angle is reduced and the petitioner will find difficulty in walking long distance and carrying weights. Thus, P.W.2 Doctor assessed the disability suffered by the petitioner at 45% and the same is stated to be partial permanent disability. There is no contra evidence available to contradict the evidence of P.W.2 assessment. As such, on the basis of evidence of P.W.2, the disability suffered by the petitioner is fixed at 45%. Even though the petitioner suffered grievous injuries, there is no evidence to prove that he has suffered any functional disability or loss of income. As such, it will not be necessary to adopt the multiplier method to compensate the disability suffered by the petitioner. It will be appropriate to compensate him by adopting percentage method and by providing Rs.3,000/- per percentage. Thus, the permanent disability compensation is calculated as (Rs.3,000/- x 45%) Rs.1,35,000/-.

14.The petitioner states that he was earning Rs.10,000/- per month by doing agriculture and milk vending business. In the absence of any proof for the same, the Tribunal fixed the notional income of the petitioner at Rs.7,500/-, the same is appropriate and does not require any modification. Considering the fact that the petitioner has suffered multiple grievous injury and undergone treatment, he could not have attended to his normal work at least for a period of two months. Thus, the loss of income during treatment period is calculated as Rs.7,500/- x 2 = Rs.15,000/-. Considering the nature of injuries and the period of treatment and other attendant circumstances, the petitioner would have undergone pain and sufferings. For the same, it will be appropriate to provide Rs.50,000/- instead of Rs.80,000/- provided by the Tribunal. The petitioner has not produced any evidence to show that he is in need of future medical treatment. Therefore, the sum of Rs.20,000/- provided by the Tribunal towards future medical expenses is set aside. The other amounts given by the Tribunal, namely, the sum of Rs.56,000/- towards medical expenses, Rs.5,000/- towards extra-nourishment, Rs.10,000/- towards Transportation, Rs.25,000/- towards loss of amenities and a sum of Rs.3000/- towards damage to cloths is confirmed. Accordingly,

the total amount of Rs.3,49,000/- ordered by the Tribunal is reduced to Rs.3,00,000/-.

15. The petitioner claims that he is entitled for compensation from both the respondents. However, the second respondent Insurance Company contends that the car bearing Registration No.KA-40-A-0055, which was insured with them does not have any valid permit to operate in the State of TamilNadu. The accident occurred on 12.11.2013. The staff of Chikbelapur RTO Office, Karnataka who deposed as R.W.2 stated that Ex.R7 is the extract of permit given to the car bearing Registration No.KA-40-A-0055 and as per the same, the said car is permitted to operate within the Karnataka State only. R.W.2 further stated that if the said car is to be operated in other states, temporary special permit is to be obtained. The person who deposed as R.W.1 stated that he is employed with the second respondent Insurance Company, the car bearing Registration No.KA-40-A-0055 is insured with them and produced a copy of the policy as Ex.R1. He also produced the copy of the permit issued to the car as Ex.R2. He also stated that the owner of the said car has only paid road tax for the period from 12.11.2013 to 18.11.2013, but no temporary permit was obtained by them. On the other hand, the petitioners produced Ex.P15 Tax Receipt to show that they have paid road tax for the period from 12.11.2013 to 18.11.2013. It is thus clear that as the accident occurred on 12.11.2013, there was no valid permit for the first respondent to operate the car in the State of TamilNadu. The petitioner produced a copy of the Registration Certificate of the car as Ex.P13. However, considering the materials available on record, the Tribunal found that the temporary permit has not been produced and as such it amounts to clear violation of the policy conditions. Hence, the Tribunal held that the second respondent Insurance Company is entitled to recover the award amount from the first respondent owner after satisfying the award. The said conclusion is appropriate and the same is confirmed.

16. In the result, this appeal is partly allowed. No costs. The amount of Rs.3,49,000/- awarded by the Tribunal dated 29.01.2016 made in MCOP.No.166 of 2015 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Krishnagiri is reduced to Rs.3,00,000/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.3,00,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. After depositing the entire award amount, the appellant-Insurance Company is permitted to recover the same from the second respondent/owner

of the vehicle bearing Registration No.KA-40-A-0055. The Appellant-Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg
To

1.The Special District Judge,
Krishnagiri.

2.The Section Officer,
V.R.Section, High Court,
Madras - 104.

+1cc to Mr.Srinivasan Ramalingam, Advocate Sr.48193
+1cc to Mr.Prabakaran, Advocate Sr.47924

C.M.A.No.1908 of 2016

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srg 9/10/2018

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