IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:01.03.2018
Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2034 of 2011

M/s.National Insurance Co. Ltd.,
rep. by its Manager,
Madha Complex, Can Road,
Vaniyampadi, Vellor District. ... Appellant/2nd Respondent

..vs..

1.George
2.Karunanidhi
...Respondents/Petitioner/1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 18.09.2010 made in MCOP.No.92 of 2006 on the file of the Motor Accident Claims Tribunal/(Additional District Judge), Fast Track Court, Dharmapuri.

For Appellants : Mr.J.Chandran

For Respondents : Mr.M.Selvam for R-1
No Appearance for R2

JUDGMENT

Aggrieved over the finding of the Tribunal dated 18.09.2010 made in MCOP.No.92 of 2006 on the file of the Motor Accident Claims Tribunal/(Additional District Judge), Fast Track Court, Dharmapuri, the second respondent-Insurance Company filed this present appeal seeking 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 petitioners is that on 10.06.2005, when the petitioner was going as a pillion rider in the two wheeler bearing Registration No.TN-20-B-8912, driver by one Maya Kannan, around 10.30. p.m., near Unampalayam Water Tank, in Uthangarai - Kallavi Road, the Auto bearing Registration No.TN-29-T-2340 belonging to the first respondent and insured with the second

respondent, came at high speed in the opposite direction, in a rash and negligent manner dashed against the two wheeler in which the petitioner was going as pillion rider, causing fracture and multiple injuries to the petitioner. The accident occurred only due to the rash and negligent driving of the first respondent Auto driver. At the time of the accident, the petitioner was aged about 22 years and by carrying on vegetable vendor business, he was earning a sum of Rs.5,000/- per month. After the accident, due to injuries suffered by him, he is not able to carry on his vegetable business as usual and he has suffered loss of income. Hence, the petitioner seeks a sum of Rs3,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, the second respondent-Insurance Company opposed the claim petition by filing detailed counter disputing the claim of the petitioner about the manner in which the accident took place. The claim of the petitioner about the age, avocation and income of the petitioner is denied. The compensation claimed is highly exorbitant. The rider of the two wheeler Maya Kannan did not possess valid driving licence at the time of accident and the petition is bad for non joining of the owner and insurer of the two wheeler involved in the accident. The petitioner was travelling as a pillion rider in the two wheeler driven by Maya Kannan and at that time without noticing the vehicle coming into opposite direction, the said Mayakannan due to his rash and negligent driving dashed against the Auto resulting in the accident. The negligence of the rider of the two wheeler alone caused the accident. Hence, the second respondent seeks dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P11 to prove his claim. On the side of the respondent R.W.1 was examined and documents Ex.R1 to Ex.R4 were marked.

6. The Tribunal, on the basis of available materials on record, found the negligence of the first respondent auto driver alone was the cause for the accident and directed the respondents to pay a sum of Rs.1,11,000/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant-Insurance company contends that the quantum of compensation awarded by the Tribunal is on the higher side. The Tribunal failed to consider the evidence on record properly. The Tribunal also failed to consider the violation of policy condition, permit as well as rules and regulations of the Motor Vehicle Act. The driver of the first respondent auto was not having any valid driving licence and there was no permit to the auto to operate in the road. As such, the second respondent cannot be held liable to pay any compensation. Hence, the appellant-Insurance company seeks to entertain the appeal and to set aside the award passed by the Tribunal.

9. On the other hand, disputing the claim of the insurer, the learned counsel appearing for the petitioner/claimants contends that the Tribunal correctly appreciated the evidence on record and arrived at just and fair compensation. No ground is made out by the Insurance Company to interfere with the same. Hence, the petitioner/claimant seeks for dismissal of the appeal.

10. Inspite of the notice being served on the second respondent, the second respondent/owner of the offending vehicle (Auto bearing Registration No.TN-29-T-2340 did not appear before this Court either in person or through counsel.

11. Thus, the only contention raised by the learned counsel appearing for the appellant/Insurance Company is that the driver of the first respondent Auto bearing Registration No.TN-29-T-2340 had no valid driving licence on the date of the accident and as such the Insurance Company is not liable to pay any compensation. The learned Counsel appearing for the second respondent-Insurance Company also pointed out that as per Ex.R4 driving licence of the first respondent auto driver expired long back and on the date of accident there was no valid driving licence.

12. In the case and hand, it is evident from the oral evidence of P.W.1 that on 10.06.2005, while the petitioner was travelling as a pillion rider in the two wheeler driven by his friend Maya Kannan in Uthangarai - Kallavi Road, near Unampalayam Water Tank, at about 10.30 p.m., the first respondent auto came at high speed and dashed against the two wheeler causing injuries as stated above. The police registered Ex.P1 First Information Report against the driver of the auto. After completing the investigation, Ex.P5 charge sheet was laid by the police against the first respondent auto driver only. Thus, it is clear from the above said documents that the

negligence of first respondent auto driver alone caused the accident. The same is corroborated by the evidence of P.W.2 who witnessed the accident in person. On the other hand, there is no acceptable evidence let in by the respondents to disprove the claim of the petitioner. The only person examined by the respondent R.W.1 Ravi who is employed in the second respondent Insurance Company, is not an eye witness to the occurrence. According to him, the first respondent driver did not possess valid driving licence and by driving the auto at the time of the accident, he has committed violation of policy condition. Thus, on the basis of Ex.P1 First Information Report and Ex.P4 Charge Sheet and Ex.P6 Judgment copy of the criminal case, it is clearly established that the driver of the auto alone caused the accident due to his negligence.

13. The Tribunal assessed the disability suffered by the petitioner on the basis of P.W.3 Doctor's evidence and Ex.P11 Xray and fixed the disability suffered by the petitioner as 30% and awarded a sum of Rs.1,11,000/- as compensation. The appellant-Insurance Company has not disputed the said conclusion of the Tribunal in any objective manner. In such circumstances, the quantum of compensation awarded by the Tribunal is just and fair and the same is needs no interference.

14. The only issue mainly contended by the appellant-Insurance Company is that there is violation of policy condition and as such they are not liable to pay any amount as compensation. It is clear from Ex.R4 that the driving licence of the driver of the auto expired long back. Likewise it is evident from Ex.P7 driving licence of the first respondent driver that the said licence was issued only during, 2010. The accident referred to in this case occurred on 10.06.2005. Thus, it is clear on the said date there is no valid driving licence possessed by the first respondent auto driver, since Ex.R4 expired long prior to the said date and Ex.P7 the licence of the first respondent driver was issued only during, 2010. Further, it is evident from Ex.P8 and Ex.P9 that there is no valid permit for the auto bearing Registration No.TN-29-T-2340 to ply on the road. Thus, there is clear cut violation of policy condition by the first respondent who permitted unlicenced person to drive the auto which does not have valid permit to ply in the road. In such circumstances, the claim of the appellant/Insurance Company that they are not liable to pay any compensation is just and valid and the same is to be accepted. However, as the vehicle Insurance was in force and only violation of policy condition is committed,it will be in the interest of justice proper to direct the second respondent to pay the award amount at the first instance to the petitioner/claimant and then recover the same from the first respondent/owner of the vehicle. The point is answered accordingly.

15. In the result, this civil miscellaneous appeal is partly allowed. No costs. The sum of Rs.1,11,000/- awarded by the Tribunal dated 18.09.2010 made in MCOP.No.92 of 2006 on the file of the Motor Accident Claims Tribunal/(Additional District Judge), Fast Track Court, Dharmapuri, is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount of Rs.1,11,000/- with interest at the rate of 7.5% p.a. 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 and then the appellant-Insurance Company is entitled to recover the same from the second respondent/owner of the vehicle in accordance with law. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

rrg

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The Additional District Judge, Fast Track Court,
The Motor Accident Claims Tribunal
Dharmapuri.

+1cc to Mr.J.Chandran, Advocate Sr.No.16195/18

NRJK(CO)
sm:28.3.2018