IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1996 of 2018
and
CMP.No.15504 of 2018

Bharathi Axa General Insurance Company Ltd.,
2nd Floor, Metro Plaza,
No:162, Anna Salai,
Chennai-600 002.
... Appellant/2nd Respondent

Vs

1.S.Balaramkumar
2.Mustafa ... Respondents/Respondents
(2nd Respondent/1st respondent
remained exparte in lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2017 made in M.C.O.P.No.7852 of 2013 on the file of Motor Accident Claims Tribunal Cum Vth Court of Small Causes at Chennai.

For Appellant : M/s.K.Poomalai

For Respondents : Mr.K.Varadhakamaraj (for R1)

JUDGMENT

The appellant insurance company is challenging the judgment and decree dated 28.03.2017 made in M.C.O.P.No.7852 of 2013 by the Motor Accidents Claim Tribunal (V Court of Small Causes), Chennai.

2. The first respondent is the claimant and the second respondent is the owner of the motorcycle which dashed against the first respondent. The appellant is the insurance company with which the motorcycle was insured.

3. It is stated that on 30.11.2013 at about 7.15 P.M., the first respondent was walking before Pachappan Street towards south to north direction in front of Door No.82/50. At that

time, a motorcycle bearing registration No.TN-10 AH 0600 driven by its rider in a rash and negligent manner dashed against him, as a result, the first respondent sustained grievous injuries. Therefore, the first respondent filed the claim petition claiming compensation of Rs.7,00,000/-.

4. The appellant insurance company filed a counter before the Tribunal refuting the claim petition, inter alia, pleading that the first respondent has to prove the fact that the motorcycle bearing registration No.TN-10 AH 0600 was insured with the appellant. It is also stated that the rider of the motorcycle did not have valid driving licence on the date of accident. That apart, the appellant disputed the age, occupation and income of the first respondent and pleaded that the claim made by the first respondent is, in any event, exorbitant.

5. The Tribunal, on consideration of the oral and documentary evidence placed before it, by the judgment impugned, awarded compensation to the tune of Rs.4,88,100/- to the first respondent.

6. Calling in question the said judgment and decree, the present appeal is filed by the appellant insurance company.

7. The learned counsel for the appellant insurance company contended that the owner of the motorcycle handed over his vehicle to the rider who is a minor and wilfully and wantonly violated statutory consequences. He would submit that the Tribunal failed to consider that when the police authority had initiated criminal proceedings by filing charge sheet against the insured under the provisions of the Motor Vehicles Act that itself would clinch that an unlicensed minor person had used the vehicle in public place. Despite production of Exs.R1 and R2-final report and copy of policy, the Tribunal erred in passing the award. Therefore, the finding of the Tribunal of joint and several liability is liable to be set aside. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel contended that the first respondent sustained non-schedule injuries and therefore, Rs.4,88,100/- awarded by the Tribunal is highly excessive.

8. Per contra, reiterating the findings of the Tribunal, the learned counsel for the first respondent submitted that after appreciating the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of the motorcycle. As far as quantum of compensation awarded by the
Tribunal is concerned, the learned counsel argued that since the first respondent sustained grievous injuries, the Tribunal ought

to have awarded more amount. Anyhow, prayed that no interference is warranted.

9. I heard M/s.K.Poomalai, learned counsel for the appellant/ Insurance company and Mr.K.Varadhakamaraj, learned counsel for the 1st respondent and perused the documents available on record.

10. Though the appellant insurance company denied the accident, to prove the same, they have not produced any evidence. The oral evidence adduced by the appellant is with regard of non-possession of a valid driving licence by the rider of the motorcycle.

11. The learned counsel for the appellant though argued that the rider of the motorcycle is a minor and he cannot ride the offending motorcycle at the time of accident, nothing has been produced to establish the same. On the other hand, the first respondent reiterated the pleadings during the course of oral evidence as P.W.1 and had also produced Ex.P1-FIR to show that the accident occurred due to rash and negligent driving of the rider of the motorcycle. If really, the rider of the motorcycle is minor at the time of accident, the police would have mentioned the same in the FIR, however, D6, Anna Square, Traffic Investigation Wing police filed the final report before the Court concerned against the rider of the motorcycle.

12. Moreover, without pleading, the appellant insurance company has raised a ground that at the time of accident, the rider of the motorcycle is a minor. The oral and documentary evidence produced by the first respondent clearly prove that the accident occurred due to rash and negligent driving of the rider of the motorcycle and further prove that he was in possession of a valid driving licence to drive the motorcycle. In view of the oral and documentary evidence, the Tribunal was right in holding that the accident occurred due to rash and negligent driving of the rider of the offending motorcycle.

13. Qua coverage of insurance policy, from Ex.R2, it is seen that the offending motorcycle was validly covered with the insurance policy at the time of accident and that the Tribunal was right in directing the appellant being the insurer of the offending motorcycle to pay the compensation.

14. In the accident, the first respondent sustained fracture on right leg and also multiple injuries all over the body. Immediately after the accident, the first respondent was admitted in Orthomed Hospital, Chennai where he had taken treatment as inpatient from 30.11.2013 to 11.12.2013 for communited intertrochantric fracture of right hip. According

to the first respondent, due to injuries sustained by him in the accident, he could not able to do his normal avocation. Ex.P3 is the discharge summary, where from it is seen that the first respondent had taken treatment as inpatient for 12 days.

15. P.W.2-Dr.Saravanabavanantham, examined the first respondent and assessed the disability at 45%. Finding that 45% disability assessed by P.W.2 has no basis, the Tribunal fixed the disability at 30%. Considering the nature of injuries sustained by the first respondent, the disability assessed by P.W.2-Doctor cannot be considered with reference to whole body and therefore, the Tribunal was right in awarding Rs.90,000/- by taking the disability at 30% by adopting Rs.3,000/- per percentage of disability.

16. The Tribunal awarded Rs.15,000/- towards transportation and extra-nourishment; Rs.3,000/- towards attender charges; and Rs.16,000/- towards loss of income during treatment period. Since the amounts awarded under the aforesaid heads are reasonable, the same are maintained.

17. The Tribunal awarded Rs.2,64,095/- towards medical expenses. Ex.P6 is the medical bills, where from this Court finds that the first respondent incurred a sum of Rs2,64,095/- towards medical expenses, which the Tribunal has rightly awarded and there is no need to interfere with the same.

18. The Tribunal awarded Rs.50,000/- towards pain and suffering and loss of amenities. It is true that throughout treatment, the first respondent might have suffered a lot and the same cannot be expected by words and that the trauma cannot be compensated in terms of money. However, considering the nature of injuries and also the period of treatment undergone by the first respondent, Rs.50,000/- awarded by the Tribunal towards pain and suffering is reduced to Rs.40,000/-.

19. As far as loss of amenities is concerned, the Tribunal awarded Rs.50,000/-. This Court, in a number of decisions emphasized that loss of amenities covers the deprivation of ordinary experiences and enjoyment of life. According to the first respondent, due to the injuries sustained in the accident, he was not able to do any usual activities as before. In the present case, awarding of Rs.50,000/- towards loss of amenities is little higher side and the same is reduced to Rs.40,000/-.

20. For the foregoing discussion, the total compensation of Rs.4,88,100/- awarded by the Tribunal is reduced to Rs.4,68,100/-.

21. In the result, the Civil Miscellaneous Appeal is partly

allowed. The compensation of Rs.4,88,100/- awarded by the Tribunal is reduced to Rs.4,68,100/- payable with interest at the rate of 7.5% per annum from the date of claim petition to the date of deposit. The second respondent insurance company is directed to deposit the modified amount along with interest within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw the amount with accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal Cum
Vth Court of Small Causes,
Chennai.

+1cc to M/s.K.Poomalai, Advocate, S.R.No.60427
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.60373

C.M.A.No.1996 of 2018 and
CMP.No.15504 of 2018

CNR(CO)
CS/12/03/2019