IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.278 of 2011

P.Ramasamy,
S/o. Ponnusamy.

.....Appellant/Claimant

Vs

1.V.S.Sankaralingam,
S/o. Shenniappan,
2.The New India Assurance Company Ltd.,
No.435,B.D.Road,
R.S.Puram,
Coimbatore – 641 002.

.......Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 26.07.2010 made in M.C.O.P. No. 97 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court) Perundurai.

For Appellant : Mr.P.Parthi Kannan

For Respondents : R1- Ex-Parte
: R2- Ms. Sree Vidhya

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant challenging the judgment and decree dated 26.07.2010 passed in M.C.O.P. No. 97 of 2009 on the file of Motor Accident claim Tribunal (subordinate Judge, Perunthurai). In the claim Tribunal the appellant/ claimant filed a Claim application under Section 166 of Motor Vehicle Act, in which, he claiming compensation for the injury sustained by him in a road accident. 1st respondent in this appeal is a owner, and the 2nd respondent is the insurer.

2. For the sake of convenience, herein after the parties are referred to as per their litigative status before the Tribunal. It is the case of injury.

3. The case of the petitioner is that, on 25.09.2008 at about 08.45 p.m., when the petitioner was riding in a moped bearing registration no. TN 33 D 3152 in Kangayampalayam to Uttukuli R.S.Road, near Kathivasithiralaya, Uttukuli R.S., a van bearing registration no. TN 39 AR 2462 came in a rash and

negligent manner with high speed, and dashed on the moped, and thereby, the petitioner fell down and sustained injuries all over the body with fractures. Immediately, after the accident he was taken to Kumaran Hospital, Tiruppur, and took the treatment as an inpatient, for a period of one week, and then he was referred to Erode Hospital for taking further treatments, towards the treatment he spent Rs.50,000/-. After the accident, he became disable permanently. At the time of accident, he was aged about 53 years, and working as a Gangman in Southern Railway, Koolipalayam Station, and he was getting a salary of Rs.9,800/- per month. According to him, the accident occurred only due to the rash and negligent driving of the driver of the van owned by the first respondent, and insured with second respondent. For the said accident a case has been registered in Crime No 399 of 2008 under Sections 279, 337 of IPC by the SHO UttuKuli. In the Claim Tribunal, the petitioner filed a Claim application claiming compensation of Rs.3,10,000/- as a total compensation.

4. The first respondent remain ex-parte.

5. On the other hand, before the Claim Tribunal the 2nd respondent by filing counter, and denied the accident itself, only due to the rash and negligent driving of the claimant the accident occurred. The petitioner should have impleaded the owner and insurer of the two wheeler, which was driven by the petitioner, at the time of accident, according to him, the first respondent violated the policy condition and permitted his driver to drove the van, without any valid licence. The age, avocation, income of the petitioner are also denied. The claim of the petitioner is exorbitant. Thus, the second respondent sought for the dismissal of the claim petition before the Tribunal.

6. In the Claim Tribunal the petitioner examined himself as P.W.1 and the Doctor who issued disability certificate to the petitioner was examined as P.W.2. Further, on the side of the claimant 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondent one Ranganathan working as a Junior Assistant in Gopichettipalayam, Regional Transport office, was examined as R.W.1 and the Administration Officer of the second respondent Insurance Company was examined as R.W.2. Apart from that four documents were exhibited as Ex.R1 to Ex.R4.

7. The Tribunal on the basis of available records, found that the first respondent van driver alone caused the accident, and passed award for a sum of Rs. 60,392,50/- as a compensation, to the injured petitioner Ramasamy and directed the first respondent to pay the compensation. Aggrieved over the said finding the Claimant has come forward with the present appeal.

8. Today, when the appeal is taken for consideration, I heard the learned Counsel Mr. P. Parthi Kannan appearing for the appellant and Ms.Sree Vidhya the learned Counsel appearing for the second respondent, and I perused the records.

9. The learned Counsel appearing for the appellant would

submit that, at the time of accident the vehicle owned by the first respondent was insured with second respondent. For which a policy has been issued by the second respondent, in favour of the said vehicle, in the said circumstances without considering the contact existing among the respondents, the Claim Tribunal passed the award, in which directed the first respondent to pay the entire compensation. In otherwise, he did not challenge the findings arrived by the Claim Tribunal, in respect to the negligence and as well as about the quantum of compensation.

10. Per contra the learned Counsel appearing for the second respondent would contend that, in the Tribunal through the evidence of R.W.1 and R.W.2. The second respondent Insurance Company, proved the fact that the driver of the van, who drove the van during the time of accident do not possess the valid and effective driving licence. Accordingly, the findings arrived by the Claim Tribunal does not need any interference. According to him the award passed by the Tribunal is found correct.

11. First of all, in order to substantiate the prayer sought by the claimant, the learned Counsel appearing for the appellant relied on the judgment of Iyyapan Vs. United Insurance Company Ltd. in which our honourable Apex Court has held as follows:

> "(i) Insurance company cannot disown its liability on the ground that although the driver was holding a licence to driver a light motor vehicle but was driving commercial vehicle.
>
> (ii) It is the statutory right of a third party to recover the amount of compensation so awarded from the insurer - It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

So considering the principle laid down by our Honourable Apex Court, in this case also the Insurance Company cannot disown his liability in paying the compensation to the claimant. In otherwise, the evidence given by the Junior Assistant attached with Gopichettypalayam Regional Transport Office has clearly disclosed that the driver of the van is not possessed with valid licence for driving the van, however on the side of the second respondent, she did not dispute the fact that the van which is respondible for the accident, is insured with second respondent, the entire evidence of R.W.2 discloses that at the time of accident, the first respondent insured his van with the second respondent. Further the policy issued by the 2nd respondent is inforce. In the said circumstances, on go through the judgment relied on by the claimant which was observed as follows:

> "Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances

the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued not withstanding he fact that the insurer may proceed against the insured for recovery of the amount.”

12. Accordingly, in the instant case following the principle laid down by our Honourable Apex Court, it is necessary for issuing the direction to the second respondent to pay the compensation fixed by the Claim Tribunal with liberty to recover the same from the first respondent, without filing any formal application. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The appellant/insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 and 2/ Claimants through RTGS/NEFT within a period of one week.

13. In the result, this appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn

TO:

1.The Motor Accident Claims Tribunal,
(Subordinate Judge)
Perundurai.

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

+1cc to Ms. Sree Vidhya, Advocate sr.no.62223
+1cc to Mr.S.Kaithamalai Kumaran, Advocate sr.no.61370

C. M.A.No.278 of 2011

nr 22/11/2018