

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3426 of 2011

The New India Assurance Co Ltd.,
Branch office, M.G. Road,
Puducherry-1. Appellant/2nd respondent

...vs...

- 1.Soundar(Minor)
(Minor respondent rep. by
their mother and next friend
Latchoumy) 1st respondent/petitioner
2.Velmurugan 2nd respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.04.2011 made in MCOP.No.76 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.V.Kumaravelan for R1
No appearance " R2

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 29.04.2011 made in MCOP.No.76 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry, the present appeal has been filed by the 2nd respondent-Insurance Company 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 petitioner is that on 06.07.2006 at about 10.45 p.m., while the petitioner was proceeding in TVS XL Super Motor Cycle bearing Registration No.PY-01-V-8059 as the pillion rider, which was proceeding in the East Coast Road, driven by his father(who died on that date)while going near Anna Cement

Works, Lawspet, Pudhucherry, another two wheeler bearing Registration No.PY-01-4287 came at high speed, driven in a rash and negligent manner, dashed against the two wheeler of the petitioner, due to which, the deceased Raja sustained head injury and died on the spot, where this petitioner Soundar sustained fracture on his right leg, right hand, head and injuries all over the body. The petitioner is school going student aged 15 years and due to the injury suffered he is unable to continue his study. Thus, he sought for a sum of Rs.2,00,000/- 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 filed counter contending that the accident does not occur in the manner alleged by the petitioner. The petitioner is to prove that the first respondent vehicle was insured with the second respondent Insurance Company and the rider of the two wheeler possessed valid driving licence. The accident occurred only due to the negligence of the deceased. Due to over speeding, the petitioner's vehicle only dashed against the first respondent vehicle which was coming in the opposite direction. As there was head on collision, both the drivers are to be held responsible for the accident and they contributed equally to the accident. The petition is bad for non-joinder of necessary parties, namely, the owner and insurer of the vehicle bearing Registration No.PY-01-V-8059. The amount claimed by the petitioner is highly excessive. Thus, the respondent sought for dismissal of the petition.

5. Before the Tribunal, MCOP.Nos.75 and 76 of 2007 were taken up for joint trial. The petitioners examined P.W.1 to P.W.4, produced documents Ex.P1 to Ex.P16 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on careful analysis of evidence, found the negligence of the first respondent's two wheeler rider alone caused the accident, passed an Award for a sum of Rs.89,000/- payable to the petitioner by the respondents. Aggrieved over the said findings of the Tribunal, the second respondent/Insurance Company have come forward with this present appeal.

7. I have heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the respondents 1 to 4/claimants/Petitioners and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal ought to have fixed the liability only on the owner of the vehicle/second respondent herein/1st respondent, as the two wheeler was driven by a person without valid driving licence. The Tribunal failed to appreciate the oral and documentary evidence, which clearly proved that the rider of the two wheeler did not possess valid and effective driving licence. The Tribunal wrongly rejected the notice and acknowledgment card on the ground that the signature of the recipients, varies. As the rider of the two wheeler was not having licence and the same amounts to violation of policy condition, the second respondent is to be exonerated. As such, the second 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/petitioner contends that the respondents have not let in any evidence to prove that the rider of the vehicle did not possess valid driving licence and as such the plea of the second respondent Insurance Company need not be entertained and therefore the insurer of the offending vehicle/the second respondent is liable to pay compensation. Thus, the first respondent/claimant/petitioner seeks for dismissal of the appeal.

10.The appellant-Insurance Company has not seriously contested the the conclusion of the Tribunal which proved the first respondent vehicle driver alone responsible for the accident. As far as the negligence aspects is concerned, the Tribunal, on the basis of oral evidence of P.W.2 as well as the contents of Ex.P1 First Information Report, concluded that the negligence of the first respondent driver alone caused the accident. As there was no contrary evidence let in on the side of the respondents, the conclusion of the Tribunal on the negligence aspect is appropriate and the same does not require any interference.

11.The petitioner who deposed as P.W.2 stated that he suffered fracture on his right leg, right hand, head and multiple grievous injuries all over the body and he took treatment in the Government Hospital Pudhucherry, Further he was studying in 10th standard at the time of accident and due to the injuries, he could not go to school for three months. He produced the wound certificate as Ex.P9 to prove the nature of injuries suffered by him. The petitioner also took treatment in the Government General Hospital, Pudhucherry as outpatient for the injuries. However, it is clear from the contents of Ex.P9 wound certificate that the petitioner has suffered multiple fracture and grievous injuries.

12.The petitioner stated that due to the injuries suffered, he finds it difficult to continue his study. P.W.3 Doctor, who examined the petitioner and issued Ex.P12 disability certificate after analyzing Ex.P13 X-ray, deposed that on 21.09.2010 after examining the petitioner and taking Ex.P13 X-rays, he found the following injuries.

- 1.Mal-union of 3rd metatarsal
- 2.Tenderness at fracture site in right foot
- 3.Mal-union of radial bone
- 4.Tenderness at fracture site in right forearm
- 5.Restriction of movement of right elbow joint
- 6.Wasting of right forearm 1"
- 7.Inability to lift weight in right hand
- 8.Inability to walk continuously

P.W.3 also stated that after verifying the medical records, he issued disability certificate Ex.P12 and he assessed the disability for the above said injuries at 46%.

13.It is clear from the evidences of P.W.2 and P.W.3 that due to the fracture and other grievous injuries suffered, the petitioner is finding it difficult to continue his study. As stated earlier, there is no contra evidence on the side of the respondent to that of P.W.3 Doctor. The Tribunal, considering the nature of fracture and other injuries and keeping in mind, the assessment of the percentage of disability by P.W.3 Doctor, fixed the whole body disability at 30%. Further, considering the nature of injuries suffered by the petitioner and disability sustained by him due to the accident, the Tribunal provided a lump sum amount of Rs.75,000/- towards disability compensation. In the light of the above discussion, the same is appropriate and does not requires any interference. Further, the sum of Rs.8,000/- provided towards pain and sufferings, Rs.2,500/- towards extra-nourishment, Rs.2000/- towards attender charges and Rs.1000/- towards transport charges is hereby confirmed. The Tribunal awarded a total sum of Rs.89,000/- and the same is appropriate and needs no interference.

14.The appellant/2nd Insurance Company contending that the rider of the first respondent vehicle did not possess valid driving licence, the same will amount to violation of policy condition and sought for exonerating them from paying any amount as compensation. There is absolutely no evidence let in by the second respondent to show that the first respondent permitted any person without driving licence to drive his vehicle. As such, the contention of the second respondent that they are not liable to pay any amount as violation of policy condition was committed has to fail. Except the said contention, the insurer has not raised any ground on the negligence and quantum aspect. As such, this Court find that there is no merit in the appeal

and there is no need for interference with the award passed by the Tribunal. The point is answered accordingly.

15.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The order and decretal order dated 29.04.2011 made in MCOP.No.76 of 2007 on the file of the Motor Accident Claims Tribunal/(Principal District Judge), Puducherry, is hereby confirmed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Principal District Judge,
Pudhucherry.

2.The Section Officer.
V.R. Section, High Court,
Madras.(2-copies)

+1 cc to Mr. M.Krishnamoorthy, Advocate Sr.45952
+ 1 cc to Mr.V. Kumaravelan, Advocate Sr.45959

MR(CO)
EU(23/10/2018)

C.M.A.No.3426 of 2011

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