IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1970 of 2017

M.Pandian ..Appellant/Petitioner

Versus

1.Ghouse Basha

2.United India Insurance Co.Ltd.,
T.P.Cell, 4th floor
No.134, Silingi Building, Greams Road
Chennai-600 006 ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 17.03.2017 made in M.C.O.P.No.7200 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For appellant : : Mr.K.Varadha Kamaraj

For Respondents : : Mr.A.Dhiraviyanathan for R2.
Mr.J.Nandagopal for R1.

J U D G M E N T

The Appellant/Claimant has filed this appeal, challenging the order and decree dated 17.03.2017 made in M.C.O.P.No.7200 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 19.10.2013 at about 9.45 p.m., while the Petitioner was riding the motor cycle bearing Reg.No.TN-22-AS-1914, in the Pantheon Road, from east to west, while going near Dhiya Yuvan church, the 1st respondent motor cycle bearing Reg.No.TN-03-E-2757 came at high speed, in the opposite direction, dashed against the Petitioner's motor cycle and as the petitioner fell down, sustained injury in his head, both legs as well as hands.

The accident occurred due to negligence of the 1st respondent two wheeler rider only. The Petitioner was aged 24 years and by carrying on flower vending business was earning Rs.10,000/- per month. Due to the injury suffered, he is unable to attend to his normal avocation resulting in loss of income to him. Thus, the Petitioner sought for Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The 1st respondent vehicle was not insured with the 2nd respondent. Even if the Policy was in force, liability is restricted as per the terms of the Policy. The rider of the vehicle bearing Reg.No.TN-03-2757 was not involved in the accident. The rider of the 1st respondent vehicle did not possess valid driving licence. As such, the 2nd respondent is not liable to pay compensation. The amount claimed by the Petitioner is highly excessive. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the Medical Expert as P.W.2, produced documents Ex.P.1 to Ex.P.14 to prove his claim. The respondent examined R.W.1 to R.W.3, produced documents Ex.R.1 to Ex.R.6 to prove their claim.

5. On careful analysis of evidence available on record, the Tribunal found negligence of the 1st respondent vehicle rider alone caused the accident, passed an award for a sum of Rs.2,05,100/- payable by the 1st respondent/owner to the Petitioner. As the driver of the vehicle did not possess valid driving licence and the same amounts to violation of Policy condition, the Tribunal dismissed the petition against the 2nd respondent/Insurance company, holding that they are not liable to pay compensation. Aggrieved over the said finding of the Tribunal, the Petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the Petitioner/claimant contends that the Tribunal erred in exonerating the 2nd respondent/Insurance company on the ground that the rider of the vehicle was a minor and drove the vehicle without valid driving licence. The Tribunal ought to have fixed the liability against the 2nd respondent/Insurance company also and directed them to pay and recover the award amount from the 1st respondent/owner of the vehicle. The tribunal fixed the disability suffered by the Petitioner at 40%, even though, the doctor assessed the disability at 55%. The amount awarded by the Tribunal under different heads is very nominal. Thus, the Petitioner sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the owner of the vehicle viz, the 1st respondent permitted the minor person without licence to drive the vehicle and this being a clear violation of policy condition, they are not liable to pay any amount. Further the amount of compensation awarded by the Tribunal itself is highly excessive and there is no need for any enhancement. As there is a clear violation of policy condition, the 2nd respondent was rightly exonerated by the Tribunal and the same is just and proper. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

8. The Petitioner who deposed as P.W.1 clearly stated that on 19.10.2003 at about 9.45 pm., while he was proceeding in his motor cycle bearing Reg.No.TN-22-AS-1914, another motor cycle baring Reg.No.TN-03-E-2757 came at high speed in the opposite direction, dashed against his vehicle causing multiple grievous injuries. The Police also registered Ex.P.1-FIR against the 1st respondent vehicle rider only. After completion of investigation, it is stated that the Police filed Ex.R.1-Charge sheet against the 1st respondent vehicle driver only. The evidence of R.W.1/S.I.of Traffic Investigation Wing and also R.W.3, who was an official of the 2nd respondent /Insurance company also makes it clear that the rider of the 1st respondent vehicle did not possess valid driving licence and charge sheet is also laid against the 1st respondent vehicle rider only. In such circumstances, taking into consideration the evidence of P.W.1, the contents of Ex.P.1-FIR and Ex.R.1-copy of charge sheet and the oral evidence of R.W.1, it is clear that the accident occurred due to negligence of the 1st respondent driver only.

9. Admittedly, the offending vehicle bearing Reg.No.TN-03-E-2757 belongs to the 1st respondent and the said vehicle was insured with the 2nd respondent as evidenced by Ex.R.5-copy of Insurance Policy and also contents of Ex.R.2-MVI Report. Therefore, it is clear that the offending vehicle belongs to the 1st respondent and had valid policy coverage. However, the contention of the 2nd respondent is that two moving vehicles met with an accident and therefore, the Petitioner also contributed to the occurrence, but, there is no evidence to support the same. The Police have registered the case against 1st respondent-driver and after investigation, filed final report also against the 1st respondent vehicle rider only. As such, the contention of the 2nd respondent that the Petitioner/claimant also contributed to the accident is unsustainable.

10. The contention of the 2nd respondent is that the rider of the 1st respondent vehicle did not possess valid driving licence and he being a minor and the said act amounts to clear

violation of Policy condition, they are not liable to pay any compensation. It is clear from the evidence of R.W.1/Sub Inspector of Police and R.W.2-Official of the RTO that the rider of the 1st respondent vehicle did not possess valid driving licence and at that point of time, he was a minor. The Tribunal, considering the said facts relying upon the Ruling of the Apex court reported in 2013 (2) TNMAC 420 (SC) [United India Insurance Co.Ltd., Vs.Sujata Arora and Others] held that in view of violation of policy condition committed, the petitioner is not entitled to recover any amount from the 2nd respondent/Insurer and held that the 1st respondent/owner alone is liable to pay compensation.

11. Aggrieved over the said finding, the Petitioner/claimant contended that even if non-possession of a driving licence and the rider being a minor may amount to violation of policy condition, such violation will not exonerate the insurer from liability to pay the compensation when there is valid coverage of policy condition.

12. The learned counsel for the Petitioner/claimant relying upon the Ruling reported in 2011(1)TN MAC 641 (SC) [Jawahar Singh Vs. Bala Jain and Others] contends that even if a minor person without licence was permited to drive the vehicle, the same will not exonerate the insurer. In the said Ruling, it is held as follows:-

> "10. Having heard learned counsel for the respective parties, we are inclined to agree with the Respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the Petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice on 2nd April, 2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.
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> 11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the

Petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.

12. Without going into the merits of the case, we are of the view that the story of Jatin, who was a minor, walking into the house of the Petitioner and taking the keys of the motorcycle without any intimation to the Petitioner, appears to be highly improbable and far-fetched. It is difficult to accept the defence of the Petitioner that the keys of the motorcycle were taken by Jatin without his knowledge. Having regard to the aforesaid facts, we are not inclined to accept the case of contributory negligence on the part of the deceased, attempted to be made out on behalf of the Petitioner. Accordingly, since the notice on the Special Leave Petition was confined to the question of contributory negligence, if any, on the part of the deceased, we see no reason to interfere with the Award of the Motor Accident Claims Tribunal, as confirmed by the High Court. The Special Leave Petitions are, accordingly, dismissed, but without any order as to costs."

13. Likewise, the learned counsel for the Petitioner relying upon Ruling reported in 2018 ACJ 1264 [Singh Ram Vs. Nirmala and others] contends that even if the minor rider of the vehicle did not possess valid driving licence, the Insurance company cannot escape its liability to pay the compensation. In the said Ruling, in Paragraphs 2, 8 and 9, it is held as follows:-

"2 In a claim for compensation under Section 166 of the Motor Vehicles Act 1988, the Motor Accident Claims Tribunal ('the Tribunal'), Yamunanagar at Jagadhri found that the insured did not hold a valid driving licence at the time of the accident. The Tribunal absolved the insurer for that reason. The insurer was, however, directed to pay the compensation awarded to the claimant and to recover it from the owner of the offending motor cycle. The High Court dealt with three appeals: one filed by the claimant seeking enhancement of compensation, a second by the insurance company and the third by the owner cum driver of the offending vehicle. The High Court held that in view of the decision of this Court in National Insurance Co. Ltd. v Swaran Singh1, the Tribunal was correct in directing the insurer to pay the compensation and to recover it from the owner-cum-driver of the offending vehicle. The present appeal has been filed by the owner and driver. The only point which has been urged in support of the appeal is that the Tribunal and the High Court erred in fastening the liability on him by granting a right of recovery to the insurer.

8. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge.

9 In the circumstances, the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs."

14. The learned counsel for the Petitioner also relying upon the Ruling reported in 2013 (2) TNMAC 262 SC [S.Iyyapan Vs. United India Insurance Co.Ltd., and another] contends that the insurer is liable to pay the compensation even if there was no valid driving licence for the minor rider. In the said Ruling, in Paragraphs 17 an 20, it is held as follows:-

"17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

20. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.
"

15. It is clear from the above said Rulings relied upon by the Petitioner/claimant that even if there was no valid driving licence for the rider, yet the Insurance company is liable to pay the compensation and recover the same from the owner of the vehicle, provided valid Policy coverage was in force on the date of the accident. In the case on hand, as evidenced by Ex.R.5-copy of Insurance Policy, the vehicle involved in the accident belonging to the 1st respondent was having valid Policy coverage on the date of the accident. It is evident from Ex.P.1 as well as evidence of R.W.1 and R.W.2 that the rider of the 1st respondent vehicle did not possess valid driving licence and he was a minor on the date of accident. However, following the above said Rulings, even in such cases, the 2nd respondent/Insurance company is liable to pay the amount on behalf of the 1st respondent and thereafter, they are at liberty to recover the same from the 1st respondent/owner of the vehicle, who by permitting an unlicenced person to drive the vehicle, violated the policy condition. As such, the conclusion of the Tribunal exonerating the 2nd respondent/Insurer, holding that they are not liable to pay any compensation is not correct and the same is set aside. As such, the 2nd respondent/Insurer is liable to pay award amount to the Petitioner at first instance and in view of the Policy condition violation committed by the 1st respondent/owner of the vehicle, the 2nd respondent/Insurer is entitled to recover the award amount from the 1st respondent, after fulfilling the same.

16. The Petitioner who suffered multiple grievous injuries was admitted in Government Hospital, Chennai, and took treatment as inpatient from 19.10.2013 to 31.10.2013. To prove the same, the Petitioner filed discharge summary-Ex.P.4. The C.T.Scan report is filed as Ex.P.8. The Petitioner contends that due to fracture of right temporal bone, he is not able to carry on his normal avocation. To prove the nature of injury suffered by him, Ex.P.2-Accident Register Copy is also produced.

17. The Petitioner also examined P.W.2/doctor who after physically examining the Petitioner and perusing Ex.P.12-Scan Report and Ex.P.13-X-ray found that the Petitioner suffered "injuries" and assessed the disability at 55%. There is no contra evidence to the same on the side of Respondent. Therefore, considering the nature of injury and other attendant circumstances and by following the Rulings reported in 2017 (1) TNMAC 251,[P.Elangovan Vs. S.Murali and others]2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], it is clear that there is no valid reason for the Tribunal to reduce the permanent disability fixed by the doctor at 55% to 40%. Therefore, it will be appropriate to fix the disability at 55% as assessed by P.W.2 and for the same compensation is to be provided at Rs.3000/- per percentage. Accordingly, towards disability compensation, Rs.3000/-x 55% = Rs.1,65,000/- is provided.

18. In such circumstances, considering the age of the Petitioner and nature of injuries suffered by him, the Tribunal, to compensate the petitioner for disability, awarded a sum of Rs.1,20,000/- as compensation at Rs.3000/- per percentage. The same is just and proper and needs no interference.

19. Likewise, considering the nature of injury suffered by the Petitioner and the period of treatment undergone by the Petitioner, the Tribunal is justified in awarding Rs.40,000/- towards Pain and Suffering.

20. The Petitioner stated that he was a flower merchant and in that business he was earning Rs.5000/- per month. To substantiate the same, he produced Ex.P.9 Salary certificate. Even though the petitioner has stated in the claim petition that he was a flower merchant, he produced Ex.P.9 to show that he was working in the Delivery section of a Flower shop, keeping in mind the nature of injury and the date of accident i.e., 2013, following the Apex Court Ruling reported in Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735, the Tribunal has correctly fixed the notional monthly income of the Petitioner at Rs.6500/- per month. However, considering the nature of injury, the Petitioner could not have attended to his employment atleast for 5 months. Thus, the loss of income for the treatment period is : Rs.6500 x 5 = Rs.32,500/-.

21. Loss of amenities:- The Petitioner find difficulty in attending to his normal work due to the injury suffered by him. Hence towards "loss of amenities", a sum of Rs.15,000/- is provided.

22. Admittedly, the Petitioner took treatment as inpatient at Government Hospital, Chennai, for 30 days and due to the nature of injury, he would have needed assistance of another person to attend his daily routine. As such, towards attender charges, at the rate of Rs.200/- per day x 30 days = Rs.6000/- is awarded. The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	1,20,000	1,65,000
2.	Attender charges	2,600	6,000
3.	Pain and suffering	40,000	40,000
4.	Extra nourishment	4,000	15,000
5.	Medical expenses	6, 000	6,000
6.	Loss of income during treatment period	19,500	32,500
7.	Loss of amenities	4,000	15,000
8.	Transport	4,000	4,000

9.	Damages to clothes	1,000	1,000
10.	Future medical expenses	4,000	4,000
	Total	2,05,100	2,88,500

23. In the result,

(i) This Civil Miscellaneous Appeal is allowed.
(ii) The award amount is enhanced to Rs.2,88,500/- from Rs.2,05,100/-.
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) PAY AND RECOVERY:- The 2nd respondent/Insurance company is liable to pay the amount on behalf of the 1st respondent and thereafter, they are at liberty to recover the same from the 1st respondent. The 2nd respondent/Insurance company is directed to deposit the modified award amount as ordered by this court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.
(v) The appellant/claimant is entitled to the award amount and shall withdraw the same along with accrued interest, less the amount already withdrawn. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

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

+1cc to Mr.J.Nandagopal, Advocate, S.R.No. 43482
+1cc to Mr.A.Dhiraviyanathan, Advocate, S.R.No. 43124
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.42943

C.M.A.No.1970 of 2017

VGII(CO)
GN(11/09/2018)