

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.773 of 2018

and

C.M.P.No.6504 of 2018

M/s.Future General India Insurance Company Ltd.,
Represented by its General Manager,
Coimbatore Branch Office.

..Appellant/
2nd respondent

Versus

1.Vasurajan ..1st Respondent/Petitioner

2.Selvamani ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 22.04.2015 made in M.C.O.P.No.236 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mayiladuthurai.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree 22.04.2015 made in M.C.O.P.No.236 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mayiladuthurai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. With consent of the learned counsel for the 2nd respondent/Insurance Company/Appellant, the main Civil Miscellaneous Appeal itself is taken up for final disposal at the admission stage.

4. The case of the petitioner is that on 07.05.2010 at about 5.30p.m., while the petitioner was proceeding on the left side of the Sitharkadu Main Road, the vehicle bearing Registration No.TN-38-AX-7708 came at high speed dashed against the petitioner, causing multiple injuries all over his body as

well as fracture and cause loss of teeth. The accident occurred only due to the negligence of the 1st respondent vehicle driver. At the time of the accident, the petitioner was aged 30 years and by working as a load man was earning Rs.9,000/- per month. Due to the fracture and the other injury suffered by him in the accident, he is unable to attend to his avocation, resulting in loss of income to him. Hence, the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

5. On the other hand, opposing the claim of the petition, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner. The petitioner drove his two wheeler without driving license at high speed and unable to control the speed caused the accident. Thus, the 2nd respondent/Insurance Company contended that the claim of the petitioner is unsustainable and sought for dismissal of the petition.

6. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2 and produced documents Exs.P.1 to P.11 to prove his claim. On the side of the respondents R.W.1 and R.W.2 were examined and documents Exs.R.1 to R.3 and Ex.X.1 were marked.

7. The Tribunal, on the basis of available evidence on record found, that the negligence of the 1st respondent driver alone caused the accident and passed an award of Rs.1,00,000/- payable by the respondents to the petitioner. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

8. Heard the learned counsel for the appellant/2nd respondent/Insurance Company.

9. The learned counsel for the 2nd respondent/Insurance Company contends that the insured vehicle driver did not possess effective license. The Tribunal is not justified in fixing liability on the 2nd respondent/Insurance Company. The Tribunal failed to consider the fact that the insured vehicle driver possessed license only to drive heavy motor vehicle and light vehicle and not motor cycle with gear and as such, no liability can be fixed on the 2nd respondent/Insurance Company. As the driver of the 1st respondent vehicle did not possess valid license, it amounts to violation of policy condition and the 2nd respondent/Insurance Company is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company sought to set aside the award passed by the Tribunal by entertaining the appeal.

10. Admittedly, the petitioner was going along the Sitharkadu Road, Maraiyur on 07.05.2010 at about 5.30p.m., and at that time a two wheeler bearing Reg.No.TN-38-AX-7708 came at high speed and dashed against him, resulting in the accident as alleged in the petition. The Police registered a case against the 1st respondent driver only as per Ex.P.1 - F.I.R. It is clear from Ex.P.2 - M.V.I. Report that no mechanical defect was found in the vehicle involved in the accident. There is no contra evidence to disprove the version of P.W.1 about the manner in which the accident occurred. It is clear from the evidence of P.W.1 and Ex.P.1 - F.I.R, that the negligence of the 1st respondent vehicle driver alone resulted in the accident.

11. The main contention of the 2nd respondent/Insurance Company is that the driver of the insured vehicle did not possess valid driving license and as such, they are not liable to pay any compensation. The copy of the Insurance Policy is produced by Ex.R.1 and the extract of Driving License Register of the RTO Office, Mayiladuthurai, is produced as Ex.X.1. The vehicle involved in the accident bearing Registration No.TN-38-AX-7708 admittedly belongs to the 1st respondent was driven by him on the accident date. The 1st respondent driving license was produced as Ex.P.5. It is clear from the same that the said person was authorised to drive heavy vehicle as well as light vehicle. When the person is authorised to drive light vehicle and heavy vehicle, it is clear that he is entitled to drive a two wheeler with gear or without gear. In such circumstances, the learned counsel for the Appellant/2nd respondent/Insurance Company fairly conceded that various courts have clearly held that any person possessing even L.L.R is entitled to drive and the Insurance Company cannot escape from the liability to pay the compensation in the case on hand, admittedly the rider of the offending vehicle owned by the 1st respondent is having valid license to drive light vehicle as well as heavy vehicle. In such circumstances, there is no merit in the contention of the 2nd respondent/Insurance Company, that the driver did not possess valid license and on that ground no liability can be fixed on them is unacceptable and unsustainable.

12. Apart from that the learned counsel for the 2nd respondent/Insurance Company did not raise any issue about the quantum of the award passed by the Tribunal. Even in the grounds of appeal nothing is stated about the quantum fixed by the Tribunal. The only contention raised in the grounds of appeal relate to driver of the 1st respondent vehicle not possessing valid effective license to drive the two wheeler with gear. As stated above, the 2nd respondent/Insurance Company driver was possessing Ex.P.5 - Driving License, authorising him to drive light motor vehicle as well as heavy vehicle. As such, the contention of the 2nd respondent/Insurance Company that the

driver did not possess any valid license at the time of the accident cannot be accepted and as the only ground alleged by the 2nd respondent/Insurance Company relates to valid license alone and as the said contention is unsustainable, this Court finds no merit in the present appeal. Further, the Tribunal has passed an award on 22.04.2015 and the appeal is now only filed belatedly. In such circumstances, this Court finds no error apparent in the conclusion arrived at by the Tribunal, fixing the liability on the respondents and the quantum arrived at by the Tribunal also appears to be just and proper. As such, the appeal has no merits and the same has to fail. The point is answered accordingly.

13. In the result, the award passed by the Tribunal on 22.04.2015 made in M.C.O.P.No.236 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mayiladuthurai is confirmed and the appeal is dismissed in the admission stage. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

bri

To

- 1.The Subordinate Court, (Motor Accident Claims Tribunal)
Mayiladuthurai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 25717

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SP(10/05/2018)