

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1788 of 2009

AND

M.P.No.1 of 2009

Cholamandalam MS General Insurance Co. Ltd.,
No.551, D.B.Road, Alankar Building,
R.S.Puram, Coimbatore. Appellant/3rd respondent

..vs..

1.Suguna 1st Respondent/Petitioner
2.Amarnath
3.Vijayarani ... Respondents 1 & 2/Respondents 1 & 2

(Respondents 2 & 3 set exparte before Lower Court and hence notice may be dispensed with)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 02.09.2008 made in MCOP.No.29 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal Subordinate Court), Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.T.G.Ravindran for R1
R2 & R3 Set exparte before Lower Court

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 02.09.2008 made in MCOP.No.29 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal Subordinate Court), Coimbatore, the present appeal has been filed by the 3rd respondent Insurance Company 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 25.09.2003 at about 6.30 hours, as the petitioner was walking on Coddissia Road, Coimbatore from North to South, the first respondent Motor Cycle bearing Registration No.TN-38-L-4422, came at high speed, in a rash and negligent manner, dashed on the petitioner, causing her grievous injuries on her knee and multiple bleeding injuries all over her body. She was admitted in Ganga Hospital, Coimbatore, where she was given treatment as inpatient. The accident occurred only due to the negligence of the second respondent's Motor Cycle rider. The petitioner was aged 40 years and by working as Manager in the private concern was earning Rs.5,000/- per month. Due to the injury, the petitioner is unable to attend to her normal avocation. Hence, the petitioner sought for a sum of Rs.3,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the third respondent-Insurance Company by filing counter contends that the second respondent's vehicle rider pleaded guilty in STC.No.449 of 2004 before the Judicial Magistrate No.VIII, Coimbatore and paid the fine amount of Rs.3,000/-. The rider of the two wheeler (first respondent) did not possess valid driving licence at the time of accident. The second respondent/owner of the vehicle was also charged under Section 3 and 181 of Motor Vehicles Act in the same Crime number and she paid the fine amount of Rs.1000/- after pleading guilty. Thus, the second respondent/owner of the vehicle by permitting a person without licence to drive the vehicle committed violation of policy condition. As such, the third respondent is not liable to pay any compensation to the petitioners. The accident does not occur in the manner alleged by the petitioner. It occurred only because as the petitioner suddenly tried to cross the road without following the traffic rules. The negligence of the petitioner alone caused the accident. The complaint to the police was lodged belatedly 4 days after the accident. The claim of the petitioner about the age, avocation and income is denied. The amount claimed by the petitioner is highly excessive. Thus, the third respondent Insurance Company seeks to dismissal of the petition.

5.Before the Tribunal, the petitioner examined herself as P.W.1 and medical expert as P.W.2, produced documents Ex.P1 to Ex.P11 to prove her claim. The respondents examined R.W.1, produced Ex.R1 to Ex.R5 to contradict the claim of the petitioner.

6.The Tribunal, on the basis of materials available on record, found the negligence of the second respondent motor cycle rider only caused the accident, passed an award for a sum of Rs.80,232/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the third respondent-

Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/3rd respondent Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/3rd respondent Insurance Company contends that the Tribunal wrongly fixed the liability on them, even though the rider of the two wheeler did not possess valid driving licence. Having accepted the evidence of R.W.1 and document produced as Ex.R1 to Ex.R5, the Tribunal ought to have exonerated the third respondent. The Tribunal erred in directing the third respondent to pay the award amount and then to recover the same. The amount awarded by the Tribunal is highly excessive. The third respondent Insurance Company sought for setting 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 Tribunal after analysing the evidence on record, correctly concluded that the negligence of the first respondent/petitioner alone caused the accident and as he did not have valid driving licence directed the third respondent Insurance Company/appellant to pay the award amount and then to recover the same from the second respondent/owner of the vehicle. Thus, the petitioner/claimant seeks dismissal of the appeal.

10. The 3rd respondent/appellant Insurance Company has not contested the conclusion of the Tribunal about the negligence aspect. As such, the finding of the Tribunal on the basis of P.W.1 eye witness account and the contents of Ex.P1 First Information Report, Ex.P4 Charge Sheet corroborated by Ex.P2 Rough Sketch of the occurrence spot and also Ex.P5 Judgment copy of the Criminal Court, under which the first respondent has admitted his guilt and paid the fine amount that the negligence of the second respondent's vehicle driver alone caused the accident, is just and proper and the same does not warrant any interference.

11. Likewise, the owner of the vehicle/2nd respondent also admitted her guilt and paid the fine amount. Thus, it is clear that the respondents 1 and 2 have admitted their guilt and paid the fine amount for the offence including permitting the first respondent to drive the vehicle, even though, he did not possess valid driving licence. Thus, it is clear that there is a clear violation of policy condition. As such, the Tribunal is justified in holding that the third respondent after satisfying the amount award is entitled to recover the same from the first and second respondents, who are the rider and owner of the motor cycle.

12.The conclusion of the Tribunal that on the basis of P.W.1's evidence and P.W.2 Doctor evidence that the petitioner suffered 20% permanent disability and consequently providing for Rs.20,000/- towards disability compensation, Rs.25,000/- towards pain and sufferings, Rs.1000/- towards Transportation, Rs.3,000/- towards extra-nourishment and a sum of Rs.5,000/- towards mental agony is appropriate and the same does not warrant any interference. The Tribunal on the basis of Ex.P7 medical bills also provided a sum of Rs.23,232.55 towards medical expenses and also Rs.3000/- towards loss of income during treatment period. The learned counsel appearing for the appellant/Insurance company did not seriously contest the quantum of award passed by the Tribunal under different heads. As such, the sum of Rs.80,232/- provided to the petitioner as compensation is appropriate and the same is to be confirmed. In the light of the above said discussion, no material is available on record and no ground is made out to prove that the award passed by the Tribunal is not appropriate. Hence, the plea of the appellant/3rd respondent Insurance Company to entertain the appeal has to fail. The Point is answered accordingly.

13.In the result, the civil miscellaneous appeal is dismissed. No costs. The Order and Decreetal order dated 02.09.2008 made in MCOP.No.29 of 2005 on the file of the Motor Accident Claims Tribunal/(Principal Subordinate Court), Coimbatore, is hereby confirmed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

+1cc to Mr.N.VijayaRaghavan, Advocate, S.R.No. 41575
+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No. 40463

C.M.A.No.1788 of 2009

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