IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2039 of 2013
and
M.P.No.1 of 2013

New India Assurance Company Ltd.,
Rep by its Divisional Manager,
1st Floor, No.1 Officers Lane,
Vellore Town, Vellore District. ..Appellant/2nd Respondent

Versus

1.Minor Vinoth Kumar
Rep. By its father Mr.Magalingam
S/o.Magalingam ..1st Respondent/Petitioner

2. Mohan Kumar .. 2nd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 31.08.2012 made in M.C.O.P.No.275 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gudiyattam.

For Appellant : Mr.G.Udaya Sankar
For Respondents : No Appearance

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J U D G M E N T

The appellant/Insurance Company has filed this appeal against the judgment and decree dated 31.08.2012 made in M.C.O.P.No.275 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gudiyattam.

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

3. The case of the minor petitioner is that on 20.05.2008 at about 5.30 a.m., while the minor petitioner was travelling in auto with his father, the driver of the auto drove the vehicle in a rash and negligent manner at high speed and lost control, resulting in the auto tilting to the side way causing injuries

to the minor petitioner. The accident occurred only due to negligence of the 1st respondent owned auto driver. At the time of the accident, the minor petitioner was aged 14 years and he was a school student. In the accident, he sustained right thigh bone fracture and abrasions on the right side of the face and loss of complexion. He took treatment in the C.M.C. Vellore and subsequently in Miot hospital, Chennai. The minor petitioner due to the injury suffered, is not able to continue his education properly. Hence, the minor petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur as alleged by the petitioners. The 1st respondent auto driver, drove the vehicle carrying over load and it was only due to that the auto got upset. As such, the 2nd respondent/Insurance Company is not liable to pay any compensation. The amount claimed by the petitioner is on the higher side. The claim of the petitioner about the injury suffered and also the amount sought for under different heads is highly excessive. Hence, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.13 to prove their claim. On the side of the respondents R.W.1 and R.W.2 were examined and documents Exs.R.1 and R.2 was produced. The Tribunal, on the basis of available evidence on record, found that the 1st respondent auto driver negligence alone caused the accident and awarded a sum of Rs.2,35,392/- as compensation payable by the respondents with liability to the 2nd respondent/Insurance Company to recover the award amount from the 1st respondent owner of the vehicle. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the offending vehicle was driven by the person not having valid effective driving license. As such, the 2nd respondent/Insurance Company is not liable to pay any amount. Since the owner of the vehicle, permitted a person without license to drive the vehicle, the compensation is to be paid only by the owner and not by the 2nd respondent/Insurance Company. The amount awarded under different heads is highly excessive. The 2nd respondent/Insurance Company sought to set aside the award passed by the Tribunal by allowing the appeal.

7. Per contra, the learned counsel for the petitioner contends that the minor petitioner being the school going student and due to injury suffered by him, his future is affected. The same occurred only due to the rash and negligent driving of the auto by its driver. As such, the 2nd respondent/Insurance Company is liable to pay compensation and the award passed by the Tribunal needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

8. Heard the learned counsel for the appellant and perused the available materials on record. No representation for the respondent.

9. The father of the minor petitioner, who deposed as P.W.1 clearly stated about the manner in which the accident occurred. Further, the police have registered Ex.P.1 -F.I.R against the driver of the 1st respondent auto only and after completion of investigation the police also laid charge sheet against the driver of the 1st respondent auto as evidenced by Ex.P.8 - Copy of the Charge sheet. The driver of the 1st respondent also admitted his guilt and suffered punishment in the criminal case as evidenced by Ex.P.11 - Certified copy of the STC extract. Thus, it is clear from the same that the accident occurred only due to the negligence of the 1st respondent auto driver. Even though the respondent examined R.W.1 and R.W.2 and produced Ex.R.1 - Investigation report, in view of the P.W.1 oral evidence as well as the contents of Ex.P.1 - F.I.R, Ex.P.8 - Charge sheet and Ex.P.11 - STC extract, it is concluded that the accident occurred only due to negligence of the 1st respondent auto driver. Thus, the conclusion arrived at by the Tribunal in that regard is perfectly in order and the same needs no interference. The petitioner stated that he sustained grievous injuries, right thigh bone fracture and abrasions on the right side of the face and loss of complexion. To substantiate the nature of injury suffered by him, the petitioner produced Ex.P.6 - Wound certificate. The petitioner also produced Ex.P.12 - Discharge summary to show that minor petitioner underwent treatment in the Miot hospital, Chennai. The Doctor, who assessed the disability suffered by the minor petitioner deposed as P.W.2 and the disability certificate issued by him is produced as Ex.P.13. It is clear from the evidence of P.W.2 that the minor petitioner has suffered fracture in the right leg and underwent treatment in C.M.C. Hospital, Vellore, and also Miot hospital, Chennai, were surgical treatment was given and plate was fixed. It is also clear from the material on record that the minor petitioner underwent surgical treatment twice. According to P.W.2 Doctor, the petitioner suffered 46% disability and he is unable to stand up on his right leg. On the basis of the evidence of P.W.2 - Doctor and Ex.P.13 - Disability certificate,

the Tribunal fixed disability suffered by the petitioner at 46% and awarded Rs.2,000/- per percentage. The same appears to be just and proper. Likewise, on the basis of Exs.P.5 and P.7 medical bills, the Tribunal has awarded a sum of Rs.1,28,392/- towards medical expenses. Considering the fact that the petitioner suffered grievous injury, as stated in Ex.P.6 – Wound certificate and he underwent surgical treatment as inpatient, the Tribunal is justified in awarding amounts towards transport expenses and nutritious food. As such, the award passed by the Tribunal granting a sum of Rs.2,35,392/- as compensation is just and proper and the same needs no interference.

10. The Tribunal after analysing the evidence on record found that there is violation of policy condition and as such the insurer after paying the award amount can recover the same from the owner of the vehicle. Either the owner of the vehicle or any one else has not come forward with any appeal against the said conclusion of the Tribunal. In spite of notice being served on the owner. The learned counsel for the 2nd respondent/Insurance Company even though contended that they cannot be directed to first pay and recover the award amount from the owner, fairly concluded that only violation of policy condition is committed and as such, the Tribunal is entitled to order pay and recover and the same is in accordance with law. As such, the finding of the Tribunal in every aspect is well founded and no ground is made out by the 2nd respondent/Insurance Company to interfere with the same. Hence, the appeal has to fail.

11. In the result, the award passed by the Tribunal is confirmed and the appeal is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   The Subordinate Judge,
   Gudiyattam.

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

+1cc to Mr.G.UDAYA SANKAR, Advocate, S.R.No. 25784

C.M.A.No.2039 of 2013

KJ(CO)
TR(10/05/2018)