IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.3423 of 2008
and
M.P.No.1 of 2008

Cholamandalam MS General Insurance Co. Ltd.,
Reptd. By its Manager,
9/1, Ulsoor Road,
Bangalore - 92. ... Appellant/2nd Respondent

Vs

1.Saraswathi ... 1st Respondent/Petitioner

2.Sundaresan ... 2nd Respondent/1st Respondent
(2nd Respondent exparte before
lower Court Hence notice dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 59 of 1988, against the judgment and decree dated 11.04.2008 made in MCOP.No.193 of 2005 on the file of the Motor Accident Claims Tribunal, Sub-Court, Hosur.

For Appellant : M/s.Harini
for Mr.N.Vijayaraghavan

For Respondents: Mr.M.Selvam (for R1)

R2 - Exparte

JUDGMENT

This Civil Miscellaneous appeal is filed by the Insurance company against the award passed in MCOP.No.193 of 2005 dated 11.4.2008 on the file of the Motor Accident Claims Tribunal cum Sub-Court, Hosur.

2.The brief facts lending to the filing of the instant appeal are as follows:

The 1st respondent sustained injuries in a road traffic accident on 15.06.2005 involving a motor cycle bearing Registration No.KA_01-Y-3859 driven by its driver in a rash and negligent manner. The appellant is the Insurer of the aforesaid vehicle. The 1st respondent preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.193/2005 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its Award dated 11.4.2008 in MCOP.No.193 of 2005 directed the appellant to pay the respondent a sum of Rs.2,22,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3.The appellant contended that the driver of motor cycle did not have a valid driving licence at the time of accident. This being violation of Insurance policy condition, the appellant is not liable to pay compensation to the claimant.

4.I heard M/s.Harini for Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.M.Selvam, learned counsel for the 1st respondent and perused the entire materials available on record. The 2nd respondent remained exparte in the Lower court and also did not appear in the present appeal.

5.Eventhough the appellant has raised the ground that the Tribunal has wrongly fixed the negligence on the part of the driver of the motor cycle, the Learned counsel for the appellant main contained is that of liability and also contested that quantum of compensation awarded by the Tribunal under the impugned award.

6.The appellant has strenuously contended that they are not liable to pay compensation because the driver of the motor cycle did not have a valid driving licence. Admittedly no driving licence of the driver was produced. Then again the onus of proving a averment is on the party alleging the same. In the instant case the burden of proof was vested on the appellant but except for the oral examination of the RW1 who has orally observed that the driver did not have a valid driving licence no evidence is available. Even if such a contention is to be admitted that would not per so make the claim in admissible. It is admitted fact that the vehicle had a valid insurance policy and that the appellant is the insurer. It is to be borne in mind that the provision of compensation in the M.V. Act were meant to help the person who sustained injuries due to the negligence of driver. It is a welfare legislation, therefore it will be a travesty of justice to deny compensation or to absolve the appellant of its liability on such count. In this regard the trial court would quote 2007(4) TNLNJ 679 Oriental Insurance Co. V - Guruvammal and other:-

"Motor Vehicles Act 1988 - Section 149- Two wheeler was

> driven by a person not having valid driving license. Vehicle met with an accident and the pillion rider got injuries on her claim petition the tribunal awarded compensation and on appeal, the High Court confirmed the liability of the insurance company and directed the insurance company to pay the amount and get it reimbursed from the owner."

This decision would squarely apply to the present case. Eventhough the driver of the vehicle did not possess a valid driving licence an award would be passed as against the 2nd respondent.

7.As found above since it is true that the 1st respondent sustained injury in the road accident on 18.06.2005 and the 1st respondent is entitled to compensation. Now we have to discuss about the quantum of compensation that the 1st respondent is entitled to. The 1st respondent sustained 2 fractures of the left leg and sustained other grievous injuries. He took treatment as inpatient from 18.06.2005 to 2.7.2005 at Srinivasa Gowda Hospital at Hosur. He has also marked medical bills P6 for a sum of Rs.51,000/-. Now due to the said accident the 1st respondent has suffered 35% disability and he is not able to walk long distances or squat. It is found that this disability is going to follow him to the rest of his life. The claimant was a coolie and now due to the disability he is not able to work. The tribunal has taken a notional income of Rs.2500/- p.m. which is very nominal and held that the claimant would have earned Rs.30000/- per month. Since he suffered 35% disability the tribunal arrived into a factor of Rs.10,500/- as the future loss per year. The claimant was 37 years old at the time of accident therefore under 2nd schedule of Sec.163(A) of M.V. Act 15 multiplier is adopted and future loss of the claimant is 10500 x 15 - 157500/-. The Tribunal has awarded a sum of Rs.10,000/- for pain and suffering since bills for Rs.51,000/- were produced the same was awarded. Further a sum of Rs.3500/- was awarded for transportation. We find no infirmity in any of the above award. The Tribunal awarded total sum of Rs.2,22,000/-.

8.Now the claimant is entitled to receive the sum of Rs.2,22,000/- as compensation for the disability suffered by him in the accident dated 15.06.2015. Since there is valid policy even though the driver has no valid licence the appellant is directed to pay the above said sum of Rs.2,22,000/- with interest at 7.5% from the date of MCOP till the date of deposit. The appellant is directed to pay the claimant and the appellant has the right to recover the same from the 2nd respondent.

9.In the result, this civil miscellaneous appeal is partly allowed and the award of the tribunal in respect of the quantum is confirmed. However the Insurance company represented that the entire award amount with accrued interest and cost had already been deposited before the Tribunal. Therefore, the Tribunal is directed to transfer the award amount to the claimants respective bank accounts through RTGS within a period of one week thereon. Further directed the Insurance company to recover the entire compensation award amount from the owner of the vehicle. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Sub-Court, Hosur.

+1cc to M/s.M.B.Gopalan, Advocate sr.no.55141
+1cc to M/s.M.Selvam, Advocate sr.no.54304

C.M.A.No.3423 of 2008
and
M.P.No.1 of 2008

nr 05/02/2019