IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.838 of 2013

M/s.National Insurance Co. Ltd.,
rep. by its Branch Manager,
No.10/40, E.Rajaji Street,
Kangeyam - 638 701. ...Appellant/ 3rd Respondent

..vs..

1.K.Veerakumar ...Respondent/Petitioner/ (claimant)

2.Ranjitkumar
3.B.Veeraraghavan ...Respondents 2 & 3/ 1st and 2nd Respondents

2nd and 3rd respodnents herein ever set exparte before the Court below. Hence notice in the appeal against them may be dispensed with

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.06.2010 made in MCOP.No.137 of 2008 on the file of the Motor Accident Claims Tribunal,(Additional District Court-Cum-Fast Track Court No.I, Erode.

For Appellants : Mr.K.Padmanabhan

For Respondents : Mr.M.Guruprasad for R-1
R2 and R3 exparte

JUDGMENT

Aggrieved over the finding of the Tribunal dated 10.06.2010 made in MCOP.No.137 of 2008 on the file of the Motor Accident Claims Tribunal,(Additional District Court-Cum-Fast Track Court No.I, Erode, the third respondent-Insurance Company has come forward this civil miscellaneous appeal.

2. For 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 20.07.2007 at about 3.45 p.m., when the petitioner was riding his two wheeler bearing Registration No.TN-33-Q-4869, from his home to Erode, near Abirami Theater in Mettur Road from north to south, a Maruthi Car bearing Registration No.TN-01-1818, came at high speed in the opposite direction and as the driver lost the control of the vehicle, dashed against the two wheeler in which the petitioner was travelling causing him grievous injuries and his right fore arm bone was broken. The accident occurred only due to the rash and negligent driving of the vehicle owned by the second respondent driver. At the time of accident, the petitioner was aged about 27 years and earning a sum of Rs.25,000/- per month by working as electrician. Due to the accident, he is not able to attend his normal work. Hence, the petitioner sought for compensation of Rs.4,00,000/- from the respondents who are the driver, owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the third respondent-Insurance Company filed a detailed counter stating that the second respondent is the owner of the vehicle as per records on the date of accident, but, the vehicle was purchased by the first respondent from second respondent even before that. Even though the vehicle is insured with the third respondent-Insurance Company, as the insured was not the owner of the car on the date of taking policy, the third respondent Insurance company claims that they are not liable to pay compensation. According to the third respondent only due to the rash and negligent driving of the two wheeler by the petitioner, the accident occurred. Further, the first respondent driver has no proper valid licence to drive the car. As unlicensed person was permitted to drive the vehicle, it amounts to violation of policy condition. Hence, the third respondent is not liable to pay any compensation. The petitioner has to prove the nature of injuries and disability suffered by him. Thus, the third respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and Medical expert was examined as P.W.2 and produced Ex.P1 to Ex.P10 documents to prove his claim. On the side of the respondents, R.W.1 was examined and Ex.R1 to Ex.R5 was produced to prove their contention.

6. After considering the available materials on record, the Tribunal found that the negligence of the second respondent driver alone caused the accident and directed the respondent to pay the award amount of Rs.93,000/- as compensation to the petitioners. Aggrieved over the said finding of the Tribunal, the third respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent and perused the materials available on record.

8. The learned counsel appearing for the 3rd respondent contends that the Tribunal failed to appreciate the evidence properly and fixing the liability against the respondent is not justified. After the conclusion arrived at by the Tribunal that the driver of the 2nd respondent vehicle did not possess any licence, deciding the issue against the third respondent-Insurance company is not proper. The Tribunal ought to have held that the amount is payable only by the owner of the offending vehicle and not by the appellant-Insurance Company. The question of pay and recovery as concluded by the Tribunal is not proper and the same is liable to be set aside. Hence, the third respondent-Insurance Company seeks to entertain the appeal and set aside the award passed by the Tribunal.

9. On the other hand, the learned counsel appearing for the petitioner/claimant contends that the Tribunal has appreciated the evidence on record properly and after fixing the negligence on the second respondent driver, awarded compensation directing the third respondent Insurance company to pay the award amount and then recover the same from the owner of the vehicle. The same is just and proper and the same needs no interference of this Court. Hence, the petitioner/claimant seeks dismissal of this appeal.

10. The petitioner who deposed as P.W.1 stated that on 20.07.2007 at about 3.45 p.m., while he was proceeding in the two wheeler towards Erode Town near Abirami Theater in Mettur Road from north to south, the Maruthi Car bearing Registration NO.TN-Q-1818, came in the opposite direction, at high speed and dashed against him causing grievous injuries to him. On the basis of complaint given by the petitioner himself, the police registered Ex.P1 First Information Report against the driver of the said Maruthi car. After completing the investigation, the police also laid charge sheet Ex.P4 against the driver of the Maruthi Car who is the first respondent in the petition. The petitioner also produced the rough sketch and observation mahazar prepared in the accident spot by the police as Ex.P2 and Ex.P3. The petitioner also pointed out that the first respondent admitted his guilt and paid the fine amount in the Criminal Case filed against him in respect of the accident. The same is clearly established by Ex.R2 copy of Order in STC No.5062 of 2007. The respondents has not let in any contra evidence to discredit the claim of the petitioner about the nature of accident and the admission of the guilt by the second respondent car driver himself. Therefore, it is clear from

P.W.1's evidence and documents produced by him as Éx.P1 to Ex.P4 and Ex.R2 produced by the respondent that the negligence on the part of the driver of the second respondent alone caused the accident. The learned counsel appearing for the appellant-Insurance Company also did not seriously disputed the said finding of the Tribunal. As such, the conclusion arrived at by the Tribunal that the negligence of the second respondent driver alone resulted in the accident is confirmed.

11. The appellant-Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, the main contention of the learned counsel appearing for the appellant-Insurance Company is that the Tribunal is not justified in directing the Insurance Company to pay the award amount and recover the same from the second respondent/owner of the vehicle. According to the 3rd respondent-Insurance Company, the driver of the offending vehicle owned by the second respondent admittedly was not having valid driving licence at the time of the accident. The third respondent examined as R.W.1 to establish the fact that the driver of the second respondent car drove the vehicle without any valid licence. It is also evident from Ex.P4 charge sheet that the first respondent was not having valid driving licence. Further, the first respondent driver himself admitted the guilt of driving vehicle without valid licence and paid the fine amount as evident from Ex.R2 copy of the Order in STC No.5062 of 2007. The 3rd respondent-Insurance Company also stated that they issued Ex.R3 notice to the first and second respondents asking them to produce the driving licence if any possessed by the first respondent driver. Inspite of the notice being served on the respondents 1 and 2, they have not produced any licence of the first respondent as sought for by the third respondent-Insurance Company. Considering the above material, it is clear that at the time of accident, the first respondent driver was not having valid driving licence to drive the vehicle.

12. Admittedly, the offending vehicle was insured with the third respondent as evidenced by Ex.R1 insurance policy copy and Ex.P5 Motor Vehicle Inspector's report. As stated earlier, the driver of the first respondent vehicle has driven the vehicle without any licence. By permitting such person to drive the vehicle, the owner of the vehicle has clearly violated the policy condition. As evidenced by Ex.R1 when such violation of policy condition occurred, it is clear that the Tribunal is empowered to direct the Insurance Company to pay any award amount to the claimant and then to recover the same from the owner of the vehicle. In the case on hand, the Tribunal after fixing the negligence of the first respondent driver alone caused the accident awarded a sum of Rs.93,000/- as compensation to the petitioner and held that the second and third respondents as the owner and insurer of the vehicle liable to pay the

compensation to the claimant. The Tribunal also held that due to violation of policy condition committed by the owner of the vehicle, namely, 2nd respondent in the petition, the 3rd respondent-Insurance Company is entitled to recover the award amount from the second respondent. The said finding of the Tribunal is just and proper. Even though the learned counsel for the third respondent-Insurance Company contended that it is only discretion of the Court to issue such direction, in the present case, there is no need to direct the Insurance Company to pay the amount and then recover the same from the owner of the vehicle. As clearly held by the Tribunal, the coverage of offending vehicle under Ex.R1 Insurance policy by the third respondent is not disputed. In such circumstances, for any violation of policy condition, the Insurance Company cannot avoid its liability. However, the Insurance Company is entitled for reimbursement of any award amount given by it from the owner of the vehicle. As such, the finding of the Tribunal that the Insurance company is also liable to pay the award amount and in the event of such payment, they are entitled to recover the same from the owner of the vehicle who is the second respondent before the Tribunal is perfectly valid and the same needs no interference.

13. The Tribunal after assessing the disability suffered by the petitioner at 20% on the basis of Ex.P10 disability certificate and oral evidence of P.W.2 Doctor, awarded a sum of Rs.93,000/- as compensation to the petitioner/claimant. The quantum of compensation is not seriously disputed by the third respondent/ Insurance Company in the present appeal. In such circumstances, considering the rival contentions, this Court is of the view that the quantum of compensation awarded by the Tribunal cannot be said to be exorbitant or on the higher side. On the other hand, it is just and fair compensation. Thus, there is no need to interfere with the quantum of compensation awarded by the Tribunal. Hence, this Court is of the view that no ground is made out by the appellant/Insurance Company to set aside the award passed by the Tribunal.

14. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The award passed by the Tribunal dated 10.06.2010 made in MCOP.No.137 of 2008 on the file of the Motor Accident Claims Tribunal,(Additional District Court-Cum-Fast Track Court No.I,) Erode is confirmed. The petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court No.I,
The Motor Accident Claims Tribunal
Erode.

2.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.M.Guruprasad Advocate sr 12447

C.M.A.No.838 of 2013

aa19/03/2018

Dated: 16.02.2018