

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1775 of 2013
and MP.No.1 of 2013
and M.P.No.1 of 2014

The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai-1. .. Appellant/2nd respondent

Vs

1.N.Rajendra Kumar ..1st respondent/Petitioner
2.Annamma James ..2nd respondent/1st respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 12.04.2012 made in M.C.O.P.No.1767 of 2010 on the file of Motor Accident Claims Special Tribunal, IV Court of Small Causes, Chennai.

For appellant : : Mr.K.Vinod

For Respondents : : Mr.C.Hanumantharao for R1
Mr.Thomas T.Jacob. -R2

J U D G M E N T

The Appellant is the Insurance company and fled the above appeal challenging the order and decree dated 12.04.2012 made in M.C.O.P.No.1767 of 2010 on the file of Motor Accident Claims Special Tribunal, IV Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 18.04.2009 when the petitioner was riding the motor cycle bearing Reg.No.TN-01-C8046 from North to south at Anna Nagar, 5th Avenue, at 7/30 a.m., the 1st respondent car bearing Reg.No.TN02-V-7957 came at high speed in the opposite direction, dashed against the petitioner's vehicle causing him multiple

injuries. According to the Petitioner, the accident occurred due to negligence of the 1st respondent car driver only. The said car was insured with the 2nd respondent/insurer. The Petitioner states that due to the injury suffered, he is unable to carry on his normal avocation. The Petitioner sought for a sum of Rs.2,35,755/- as compensation from the respondents. '

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged in the claim petition. The petitioner is to prove that the driver of the 1st respondent vehicle possessed valid driving licence. The claim of the Petitioner is exorbitant. The petition is liable to be dismissed.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.10 to prove his claim. The respondent examined R.W.1 and produced Ex.R.1 document. After analyzing the evidence on record, the Tribunal found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.1,35,300/- payable by the respondents. Aggrieved over the said finding of the tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the 2nd respondent/Insurance company/appellant contends that the Tribunal erred in fixing negligence on the part of the 1st respondent/driver as the cause for the accident. The Tribunal having found that the driver of the car did not possess valid driving licence erred in holding that the insurance company is liable to pay compensation to the Petitioner/claimant at first instance and then to recover the same from the owner of the 1st respondent. The tribunal erred in fixing liability on the 2nd respondent, as there was no statutory obligation to pay compensation. The Tribunal is not correct in directing the 2nd respondent to pay and then recover the award amount. The award passed by the Tribunal is highly excessive. The 2nd respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioner/claimant contends that as third party, he is entitled to seek compensation from both the respondents and the Tribunal has correctly passed the award which is just and fair

compensation. The negligence of the 1st respondent vehicle driver alone caused the accident. Therefore, the 2nd respondent as the insurer of the vehicle is liable to pay the compensation.

There is no merit in the appeal. No Ground is made out to interfere with the award passed by the Tribunal. The petitioner/claimant seeks for dismissal of the appeal.

8. Both sides have not challenged the issue of negligence. The Tribunal after considering the evidence of P.W.1/injured, Petitioner and the contents of Ex.P.1-FIR, Ex.P.3-Copy of the charge sheet, Ex.P.2-Rough sketch of the occurrence spot, fixed the negligence on the part of the 1st respondent car driver alone caused the accident. On the other hand, the 2nd respondent did not examine either the driver of his car or any other person who witnessed the accident. The Police, after registering the case, and on completion of investigation found negligence of the 1st respondent car driver alone caused the accident laid Ex.P.3-Charge sheet against 1st Respondent Car Driver. The same is not contradicted by the 2nd respondent in any manner. As such, the conclusion of the Tribunal, on the basis of P.W.1-oral evidence and contents of Ex.P.1-FIR, Ex.P.3 Copy of charge sheet which is corroborated by Ex.P.2-Rough sketch, that negligence of the 1st respondent vehicle driver alone caused the accident is just and proper. The same needs no interference.

9. The 2nd respondent/Insurance company contends that the owner of the vehicle viz., the 1st respondent has committed violation of policy condition by permitting a person without licence to drive the vehicle and as such, the 2nd respondent is not liable to pay any compensation.

10. According to the 2nd respondent, the car bearing Reg.No.TN-02-V-7957 was driven by a person without driving licence on the date of the accident. The 1st respondent, by permitting the unlicensed person to drive the vehicle has committed the violation of terms and conditions of the Policy. The fact that the car driver did not possess licence is clear from the contents of Ex.P.3-Charge sheet as the driver was charged under Section 3 read with 181 of Motor Vehicles Act apart from other provisions of IPC. It is clear that the driver of the car did not possess valid driving licence. The same will definitely amount to violation of Policy condition. Pointing it out, it is contended by the learned counsel for the appellant/Insurance company that they are not liable to pay any compensation as violation of Policy condition is committed and

they should be exonerated. The learned counsel for the IInd Respondent/Insurance Company relied on the decision of Apex court reported in 2008(3) SCC 193 (Prem Kumari and others Vs. Prahlad Dev and others), to contend that where there was violation of policy condition, the concept of purposive interpretation has no application.

11. Refuting the said contention, the learned counsel for the claimant contended that the the Apex Court has clearly held that when violation of policy condition is committed by the owner who permitted a person without licence to drive the vehicle, the insurer is bound to pay the award amount at first instance and then to recover the same from the owner of the vehicle. In support of the same he relied upon the Ruling of this court reported in 2009(2) TN MAC 103 (DB) [United India Insurance Co.Ltd., Vs. S.Saravanan and another] to contend that the insurer is to pay and recover the amount from the insured owner as valid policy was in force. The said contention is appropriate and is accepted. As such, the contention of the appellant/Insurance company that they cannot be forced to pay the award amount at first instance and then to recover the same from the 1st respondent is unsustainable and the said contention has to fail. The Point is answered accordingly.

12. Both sides have not seriously disputed the quantum of the award passed by the tribunal. On a careful analysis of the award amount passed by the Tribunal under different heads, it is clear that on the basis of available evidence, the Tribunal has passed a just and reasonable award granting a sum of Rs.1,35,300/- payable by the Insurance Company and then recover the same from the first respondent. The same needs no interference.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The judgment/award passed by the Motor Accidents Claims Tribunal, Chennai [IV Court of Small Causes, Chennai] in MCOP.No.1767 of 2010 is confirmed. Since this court by order dated 10.01.2014 had directed the appellant/Insurance company to deposit the entire award amount along with accrued interest, the claimant is entitled to withdraw the same, by filing necessary application. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

The IV Judge, (IV Court of Small Causes)
Motor Accidents Claims Tribunal,
Chennai.

Copy to

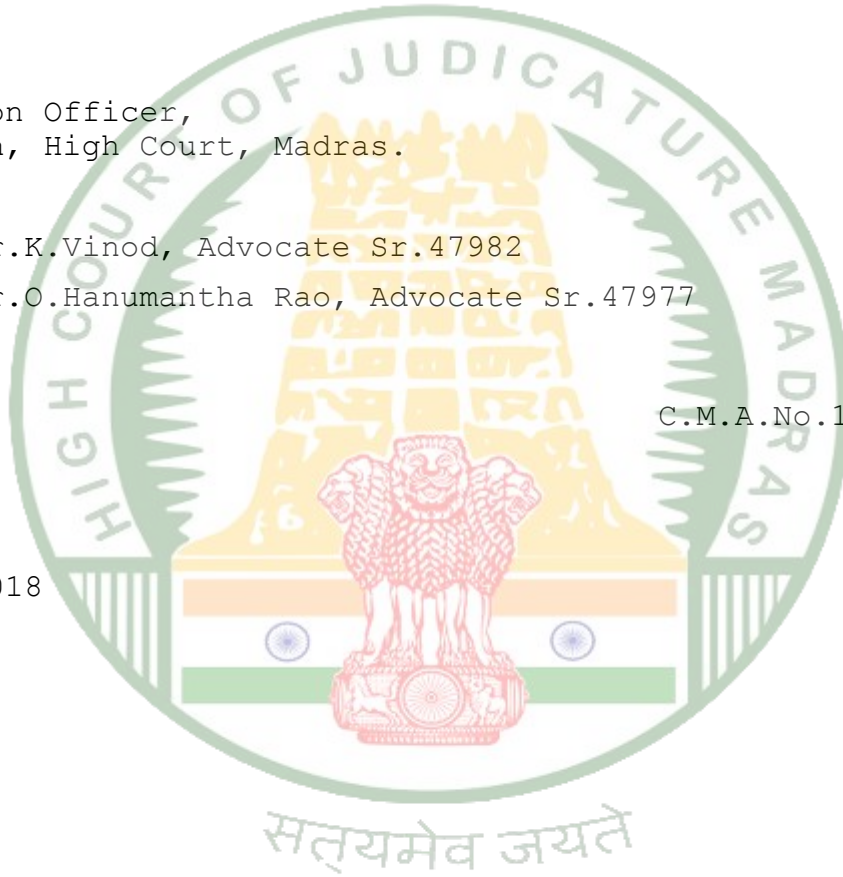
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Vinod, Advocate Sr.47982

+1cc to Mr.O.Hanumantha Rao, Advocate Sr.47977

C.M.A.No.1775 of 2013

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