

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1075 of 2013

and

MP.No.1 of 2013

The New India Insurance Co. Ltd.,
CSI Complex,
No.1, (Officer's Lane),
Anna Salai, Vellore - 4.Appellant/2nd Respondent

vs.

1.R.Ravi1st Respondent/Petitioner

2.A.Mohammed Muddasir Altaf 2nd Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 05.10.2012 passed in MCOP.No.104 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No appearance

J U D G M E N T

The New India Insurance Company, the second respondent in MCOP.No.104 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore has filed the present appeal. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 26.12.2010.

2. The case of the claimant in nutshell is as follows:

On 26.12.2010, when the claimant was walking along Chokkalingam Nagar, Konavattam and at about 07.00 pm, a speeding two wheeler bearing Registration No. TN 22 AQ 5947 belonging to the second respondent and insured with the present appellant hit him, as a result of which, he fell down and sustained grievous injuries all over his body.

According to the claimant, the rash and negligent riding of the rider of the two wheeler belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the New India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the two wheeler remained absent before the Tribunal and therefore he was set exparte. The New India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Vellore after analysing the evidence on record, awarded a compensation of Rs.88,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal also directed the New India Insurance Company to pay the compensation to the claimant in the first instance and then recover the same from the owner of the two wheeler, since the rider of the two wheeler was not in possession of a valid driving licence on the date of the accident. Aggrieved over the orders passed by the Tribunal, the New India Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant. No appearance for the respondents.

5. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The New India Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

6. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the New India Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the two wheeler is perfectly in order.

7. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing

for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeal fails and is dismissed.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / New India Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.88,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.104 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Vellore within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the two wheeler bearing Registration No. TN 22 AQ 5947 on the same cause of action.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate Court,
Vellore.

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

+1cc to M/s.N.Vijayaraghavan, Advocate Sr.87883

CMA.No.1075 of 2013
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