IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2019
DELIVERED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2423 of 2007

Buminathan ... Appellant

Vs

1.Poovarasan

2.The Manager,
National Insurance Co.Ltd.,
No.12, K.K.Road,
Muruga Theatre Complex,
Villupuram. ... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.07.2006 made in MACTOP No.376 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Villupuram.

For Appellant : Mr.S.Vadivel Murugan

For Respondents : No appearance for R1
Mr.J.Chandran for R2

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.68,750/- towards compensation due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 01.12.2004, the appellant was travelling as a pillion rider in the TVS Suzuki two-wheeler bearing Reg.No.TN-05-D-9931 from Tindivanam to Koottetipattu. At about 04.15 p.m., when they were nearing Jekkampettai NBC Petrol Bunk, a lorry was coming from the opposite direction. On seeing the lorry, the driver of the two-wheeler was unable to control the vehicle and dashed against a lady who was walking on the left side of the road. Due to the said impact, the appellant fell down and sustained severe injuries. The appellant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.68,750/- with interest at the rate of 7.5% per annum from the date of petition. The said sum has been directed to be paid to the appellant/injured only by the owner of the vehicle, the first respondent herein.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant /claimant has submitted that the Tribunal ought not to have absolved the second respondent Insurance Company from the liability to pay compensation to the appellant. It is also submitted that the Tribunal has not considered the materials and evidence in proper perspective while awarding the compensation and hence the compensation awarded by the Tribunal has to be enhanced.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence and correctly fixed the liability on the owner of the two-wheeler to pay compensation to the injured and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.Upon considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler and the same is not disputed by the learned counsel appearing on both the sides. The question to be decided is, who is liable to pay compensation to the claimant. In this connection, the Tribunal has examined Ex.P5-Copy of Insurance Policy and came to know that the first respondent herein is the owner of the vehicle and the vehicle has been insured with the second respondent Insurance Company. It was put forth on behalf of the Insurance Company before the Tribunal that the first respondent-Poovarasan is the owner of the vehicle, but the vehicle has been driven by some other person, viz.Arun and the injured travelled in the vehicle as a pillion rider. In these circumstances, the injured claimant will come under 'gratuitous passenger' category and hence the Insurance Company is not liable to pay compensation. The Tribunal relied upon the judgment of the Hon'ble Supreme Court in the case of United India Insurance Co.Ltd., Shimla v. Tilak Singh and others, reported in 2006 S.A.R. (Civil) 427 and held that the Insurance Company is not liable to pay any compensation to the pillion rider of a two-wheeler upon sustaining injuries due to the accident, and accordingly directed the owner of the two-wheeler / the first respondent herein to pay the compensation to the appellant/injured.

8.In this regard, the learned counsel for the appellant / claimant relied upon the decision of the Hon'ble Supreme Court in Shivaraj v. Rajendra, reported in 2018 (2) TN MAC 273 (SC) and submitted that the Tribunal ought to have directed the Insurance Company to pay compensation to the appellant and thereafter recover the same from the owner of the vehicle.

9.This Court has perused the judgment of the Hon'ble Supreme Court in Shivaraj v. Rajendra, reported in 2018 (2) TN MAC 273 (SC). In that case, the Tribunal, holding that the claimant therein travelled as a loader in the tractor and the insurance policy covered risk of 1 + 4, held the insurer liable to pay compensation. On appeal, the High Court held that the tractor was insured only for agricultural purpose and not for carrying goods and since the tractor could accommodate only one person, ie., driver, but the claimant travelled in the tractor as a passenger in breach of policy conditions, the insurer is not liable to indemnify the owner. Thereafter, on appeal, the Hon'ble Supreme Court held that the High Court ought to have directed the insurer to pay the compensation to the claimant and recover the same in consonance with the view taken in the case of National Insurance Co.Ltd. v. Swaran Singh, reported in 2004 (3) SCC 297, Mangla Ram v. Oriental Insurance Co.Ltd., reported in 2018 (1) TN MAC 681 (SC) and Manuara Khatun v. Rajesh Kumar Singh, reported in 2017(4) SCC 796.

10.In the present case, the Tribunal held that the injured claimant will come under 'gratuitous passenger' category and hence the Insurance Company is not liable to pay compensation. When a pillion rider is permitted to travel in a motorcycle and the vehicle is covered by a valid insurance policy, the above decision of the Hon'ble Supreme Court in Shivaraj v. Rajendra, has to be necessarily applied in the case on hand. Accordingly, applying the principles enunciated therein, to the present case, this Court deems it fit and proper to direct the Insurance Company to pay the compensation to the appellant / claimant and thereafter recover the same from the owner of the vehicle.

11.With regard to the quantum of compensation, the Tribunal fixed the annual income of the injured at Rs.15,000/-, since there was no evidence adduced as regards the income of the injured working as mechanic. Thereafter, the Tribunal adopted the multiplier of 17 and awarded a sum of Rs.63,750/- in respect of 25% disability. The Tribunal has also awarded a sum of Rs.5,000/- towards pain and suffering. The Tribunal has correctly considered the materials and evidence and awarded the total compensation at Rs.68,750/-, in consonance with the injuries suffered by the claimant. Hence, the same does not require any enhancement.

12.Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. The second respondent Insurance Company is directed to deposit the award amount with interest as ordered by the Tribunal, ie., Rs.68,750/- with interest at the rate of 7.5% per annum from the date of petition, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal. The Insurance Company, thereafter, shall recover the amount from the owner of the two-wheeler, ie., the first respondent herein, in the manner known to law.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Villupuram.

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

+1cc to Mr.S.Vadivelmurugan, Advocate, S.R.No. 63142

C.M.A.No.2423 of 2007

PA(CO)
GN(02/03/2020)