

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2019
DELIVERED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2596 of 2007

1. K.Jaganathan

2. Branch Manager,
National Insurance Co.Ltd.,
Branch Office, Anuradha Complex,
3rd Floor, No.333, Bangalore Road,
Krishnagiri. Appellants

Vs

1. M.Senthilkumar

2. K.S.Suresh

3. Branch Manager,
New India Assurance Co.Ltd.,
Branch Office, Erode. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.09.2005 made in OP No.564 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court No.2), Dharmapuri at Krishnagiri.

For Appellants : Mr.D.Bhaskaran for the
Appellants

For Respondents: Mr.M.Selvam for R1
Mr.J.Chandran for R3
R2- Exparte

JUDGMENT

This appeal is preferred by the owner of the vehicle and the Insurance Company against the award of a sum of Rs.2,40,800/- towards compensation to the first respondent, due to the injuries suffered by him, in a motor vehicle accident.

2.The case in brief, is as follows:

On 03.08.2003, the first respondent was travelling as a pillion rider along with the second respondent, in the Yamaha motorcycle belonging to the second respondent and insured with the third respondent Insurance Company, bearing Reg.No.TN-29-P-8217 from Pothinayanapalli, to go to Krishnagiri Town, in the Maharajakadai - Krishnagiri Road. At about 08.20 p.m., when the vehicle was proceeding in the Syed Basha Mountain, the TVS Suzuki Max 100R two-wheeler bearing Reg.No.TN-29-R-3034 belonging to the first appellant herein and insured with the second appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the Yamaha motorcycle. Due to the said impact, both the rider and the pillion rider of the Yamaha motorcycle suffered grievous injuries. The first respondent 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.2,40,800/- with interest at the rate of 9% per annum from the date of petition. The Tribunal fixed the negligence at the ratio of 50:50 on the part of the riders of both the motorcycles, and accordingly directed both the insurance companies to pay the compensation, jointly and severally.

3.Challenging the same, the insurer and the insured of the TVS Suzuki Max 100R two-wheeler bearing Reg.No.TN-29-R-3034, have filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in coming to the conclusion that the riders of both the two-wheelers were responsible for the accident. It is also submitted that the rider of the Yamaha motorcycle was not having the valid driving licence to drive the vehicle. It is also his submission that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent /claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials available on record carefully and meticulously.

7.The first respondent / claimant has been examined as P.W.1. He deposed before the Tribunal that the rider of the TVS-Suzuki motorcycle drove the vehicle in a rash and negligent

manner and dashed against the Yamaha motorcycle and that the criminal case has been filed against him, on the basis of the false information. But R.W.1-Saravanan, Inspector of Police, who took up the case for investigation in Crime No.830 of 2003 on the file of the Krishnagiri Police Station, deposed before the Tribunal that on investigation, it was found that the first appellant was riding the TVS-Suzuki motorcycle towards Maharajakadai, following the traffic rules, and at that time, Senthilkumar, S/o.Munirathinam, came in the Yamaha motorcycle in a rash and negligent manner and dashed against the TVS-Suzuki motorcycle. Upon perusal of the First Information Report, it is seen that the case has been filed against the rider of the Yamaha motorcycle. Upon considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred on account of the negligence of both the drivers of the vehicles and accordingly directed both the insurance companies to pay the compensation, jointly and severally. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.2,26,800/- towards loss of earning capacity due to disability. It was deposed by the first respondent / injured before the Tribunal that he was earning a sum of Rs.150/- per day as a temporary fitter in the TWAD Board, Krishnagiri and thus, he was earning a sum of Rs.4,500/- per month. But since there was no documentary evidence available to that effect, the Tribunal fixed the monthly income at Rs.3,000/-. Since the disability assessed by the Doctor is 35% (Ex.P8), the Tribunal took 35% of the said sum of Rs.3,000/- and arrived at the sum of Rs.1,050/- as the monthly income towards 35% disability and arrived at the annual income at Rs.12,600/-, adopted the multiplier of 18 and arrived at the said sum of Rs.2,26,800/-. The Tribunal has correctly analysed the income of the deceased, adopted the correct multiplier and arrived at Rs.2,26,800/- towards loss of earning capacity due to disability. Hence the amount of Rs.2,26,800/- awarded by the Tribunal towards loss of earning capacity due to disability, is confirmed.

9.The Tribunal has also awarded a sum of Rs.10,000/- towards medical expenses and Rs.2,000/- each towards pain and suffering and extra nourishment. The amounts awarded towards these heads are very reasonable and hence the same are also confirmed.

10.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs.

11.The second appellant-Insurance Company and the third respondent-Insurance Company are directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

KM
To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate Court No.2), Dharmapuri.

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

+1 CC to Mr.D.Bhaskaran, Advocate sr 63621

+1 CC to Mr.M.Selvam, Advocate sr 63476

+1 CC to Mr.J.Chandran, Advocate sr 63304.

C.M.A.No.2596 of 2007

SS (CO)
SP (09/06/2020)

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