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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CMA.No.1037 of 2010

and

M.P.No.1 of 2010

National Insurance Co. Ltd.,
Vijay Plaza Building, II Floor,
C32, Second Avenue,
Anna Nagar, Chennai - 40.

...Appellant/2nd Respondent

Vs.

1.Balan
2.A.Niyaz Ahamed

...1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 19.06.2009, in M.C.O.P.No. 685 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District & Sessions Judge / Fast Track Court No.2), Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Respondents : Not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 685 of 2007, on the file of the Motor Accidents Claims Tribunal, (Additional District & Sessions Judge / Fast Track Court No.2), Poonamallee.

2. The brief case of the first respondent / claimant is as follows:

(i) The first respondent / claimant was aged 24 years on the date of the accident. He was working as TV cable operator and was earning a sum of Rs.6,500/- per month.

(ii) On 28.04.2007, at about 10.45 am, while the first respondent / claimant was proceeding in a motorcycle bearing



Registration No. TN 02 S 9069 from IFC Tank road towards ICF North Colony (from North to South), at the time of turning to the western side, at the junction of ICF, suddenly the second respondent's motorcycle bearing Registration No. TN 01 Y 1884 came on the same road, on the same side and in the wrong path in a rash and negligent manner endangering the public safety and hit the back side of the first respondent / claimant's vehicle, thereby the first respondent / claimant has sustained injuries all over his body.

(iii) According to the first respondent/claimant, the accident occurred only due to the rash and negligent act of the driver of the second respondent's vehicle. The second respondent is the owner of the motorcycle bearing Registration No. TN 01 Y 1884 and the present appellant is the insurer of the said motorcycle. Hence, both the owner and insurer are vicariously and statutorily liable to pay compensation to the first respondent / claimant with costs and interest from the date of petition.

3. The owner of the motorcycle bearing Registration No. TN 01 Y 1884 was absent before the Tribunal and therefore, he was set ex-parte. The National Insurance Company Limited contested the claim petition. The Insurance Company has disputed the age, avocation, nature of injuries sustained by the first respondent / claimant and monthly income of the first respondent / claimant before the Tribunal and contended that the quantum of compensation claimed by the first respondent / claimant is very excessive.

4. Before the Tribunal, on the side of the first respondent / claimant, PW1 and PW2 were examined and exhibits P1 to P6 were marked. On the side of the Insurance Company, RW1 was examined and no documentary evidences were adduced.

5. The learned Additional District and Sessions Judge, after taking into consideration all the oral and documentary evidences adduced before the Court, awarded a compensation of Rs.1,00,000/- together with interest at the rate of 7.5% per annum and directed the insurer of the motorcycle bearing Registration No. TN 01 Y 1884 to 'pay' the said compensation to the first respondent / claimant and then 'recover' the same from the owner of the offending vehicle. Aggrieved over the order passed by the learned Judge, the National Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard both sides.



7. The factum of the accident, involvement of the vehicle, manner of the accident and the rash and negligence fixed on the part of the driver of the second respondent's vehicle which was insured with the present appellant are in dispute and the same is hereby confirmed.

8. The learned counsel appearing for the appellant / National Insurance Company Limited would contend that there is no driving licence for the driver of the offending vehicle at the time of the accident and therefore, the National Insurance Company Limited is not liable to pay compensation to the first respondent / claimant.

9. However, in the decision in the case of Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, the Hon'ble Division Bench of the Supreme Court has held that eventhough the driver of the offending vehicle did not possess valid driving licence on the date of the accident, the Insurance Company may be directed to 'pay' the compensation amount to the claimant and then 'recover' the same from the owner of the offending vehicle. In view of the said decision, the 'pay and recovery' clause ordered by the Tribunal does not warrant any interference and the same is hereby confirmed.

10. Quantum of compensation: After going through the award passed by the Tribunal and also the heads under which the compensation is awarded, it appears that the same is just and reasonable and it does not suffer from any illegality or irregularity. Accordingly, the quantum of the compensation awarded by the Tribunal is hereby confirmed.

11. The Tribunal has awarded a sum of Rs.1,00,000/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. However, if the Insurance Company failed to deposit the said amount within the time stipulated by the Tribunal, it has directed the Insurance Company to pay interest at the rate of 10% per annum on the sum of Rs.1,00,000/- from the date of claim petition till the date of deposit and the same stands hereby vacated. It is made clear that the Insurance Company is liable to pay compensation amount to the first respondent / claimant together with interest only at the rate of 7.5% per annum. With this modification, the appeal is disposed of.



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12. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The appellant / National Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.1,00,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 685 of 2007, dated 19.06.2009, on the file of the Motor Accidents Claims Tribunal, the learned Additional District and Sessions Judge, Fast Track Court No.2, Poonamallee within a period of eight weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 01 Y 1884 in the manner known to law.

(iv) On such deposit being made by the appellant, the first respondent / claimant is permitted to withdraw the same immediately, in the manner known to law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Additional District and Sessions Judge,
Fast Tract Court - No.2,
Poonamallee.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.D.Bhaskaran, Advocate Sr.41011

CMA.No.1037 of 2010
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srg 11/10/2019