

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1273 of 2009
and
C.M.P.No.19029 of 2019

Palanisamy Gounder

...Appellant

.Vs.

1.C.Sathiyamoorthy

2.Reliance General Insurance Company Ltd.,
No.141/71, Thiru Venkadasamy Road, (West),
R.S.Puram,
Coimbatore - 2.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.11.2008 passed in MCOP.No.291 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram.

For Appellant : Mr.N.S.Sivakumar

For Respondents : Mr.N.Vijayaraghavan for R2
R1 - No appearance

JUDGMENT

The appellant is the claimant in MCOP.No.291 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident on 12.09.2006.

2. The case of the claimant is that on 12.09.2006, he was riding TVS 50 on Kangayam - Coimbatore main road and at about 04.30 p.m, a speeding new motorcycle bearing Engine No. AF5F61498374; Chasis No. MD625KF5161F572 belonging to the first respondent and insured with the second respondent, hit him, as a result of which, he sustained grievous injuries all over his body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the second respondent,

Reliance General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

4. The first respondent, owner of the motorcycle remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Reliance General Insurance Company Limited, contested the claim petition on all the grounds available to the insurer. The learned Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram after analysing the evidence on record, awarded a compensation of Rs.70,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further held that since the rider of the offending two wheeler was not in possession of a valid driving license on the date of the accident, the Insurance Company is not liable to pay compensation to the claimant and exonerated the liability of the Insurance Company. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.N.S.Sivakumar, learned counsel appearing for the appellant / claimant would contend that the rider of the offending two wheeler was in possession of a valid driving license on the date of the accident as evidenced by additional document No.1 and therefore the Tribunal was wrong in holding that the rider of the two wheeler drove the vehicle without any valid driving license.

6. The Tribunal is wrong in exonerating the liability of the Insurance Company, merely because the rider of the offending vehicle was not in possession of the valid driving license on the date of accident, since as per the decisions rendered in (1) Shamanna and another vs. Divisional Manager, Oriental Insurance Co. Ltd., and others reported in 2018(2)TN MAC 151 (SC) (2) Kempaiah and others vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC) when there is no valid driving license to drive a transport vehicle as on date of the accident, the Insurance Company should be directed to satisfy the Award with liberty to recover the same from the owner.

7. The learned counsel appearing for the appellant has filed a petition in CMP.No.19029 of 2019 to receive the following additional documents as Ex.A9 to A11.

S.No	Date	Description of documents	Status	Exhibit
1.		Driving License of M.Selvakumar, S/o.Muthuraj, S, Valid with effect from 29.01.2002 till 28.01.2022.	Photocopy	A9

S.No	Date	Description of documents	Status	Exhibit
2.	22.07.2006	Insurance policy for unregistered vehicle Engine No.AF5F61498374; Chasis No. MD625KF5161F572; TVS Star City 100 c.c, of the manufacturing year of 2006 covered by package policy No.12-23-12-68770-06 with validity from 22.07.2006 11.00 hours to midnight 21.07.2007	Photocopy	A10
3.	22.07.2009	Vehicle Invoice issued in favour of 1 st Respondent by the TVS Motor Authorised Dealer.	Photocopy	A11

No objections were raised by the Insurance Company for allowing this application and accordingly the petition is allowed and the documents are marked as Ex.A9 to Ex.A11.

8. However in the instant case, the claimant has now adduced a copy of the driving license of the rider of the offending vehicle. Therefore, the Insurance Company is jointly and severally liable to pay compensation to the claimant.

9. As far as quantum of compensation is concerned, a perusal of the discharge summary (Ex.A5) shows that the claimant had sustained head injury and fracture of clavical bone and ribs and he was admitted in Ramakrishna Hospital, Coimbatore as an in-patient from 12.09.2006 to 23.09.2006. An operation was also performed on 15.09.2006 for excision of blood clot in the brain. Dr.Tr.Periasamy (P.W.2) had assessed the partial permanent disability as 28%. It is contended that the claimant was an agriculturist and was earning a sum of Rs.5,000/- per month. However, no proof of income is filed and the notional income per month is fixed as Rs.3,500/-.

10. A perusal of the discharge summary shows that there is no functional disability and therefore adopting multiplier method is not warranted as far as the present case is concerned. However, the Tribunal has awarded meagre amount of Rs.24,000/- towards partial permanent disability and the same is liable to be enhanced as Rs.46,000/-.

11. On account of the accident, the claimant would not have been in a position to attend to his regular work for atleast twelve months and therefore, a sum of Rs.42,000/- (Rs.3,500/- X 12 months) is awarded towards loss of income.

heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial permanent disability	Rs.46,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Extra nourishment	Rs.5,000/-
4.	Transportation	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Loss of income	Rs.42,000
7.	Damage to clothes	Rs.500/-
8.	Medical bills	Rs.68,204/-
Total		Rs.1,93,704/-

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.70,000/- to Rs.1,93,704/- which would carry interest at the rate of 7.5% per annum.

14. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.70,000/- to Rs.1,93,704/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, Reliance General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.1,93,704/- (less the amount already deposited) at the first instance and then recover the same from the first respondent, 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.291 of 2007 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Fast Track Court No.III,
Dharapuram.

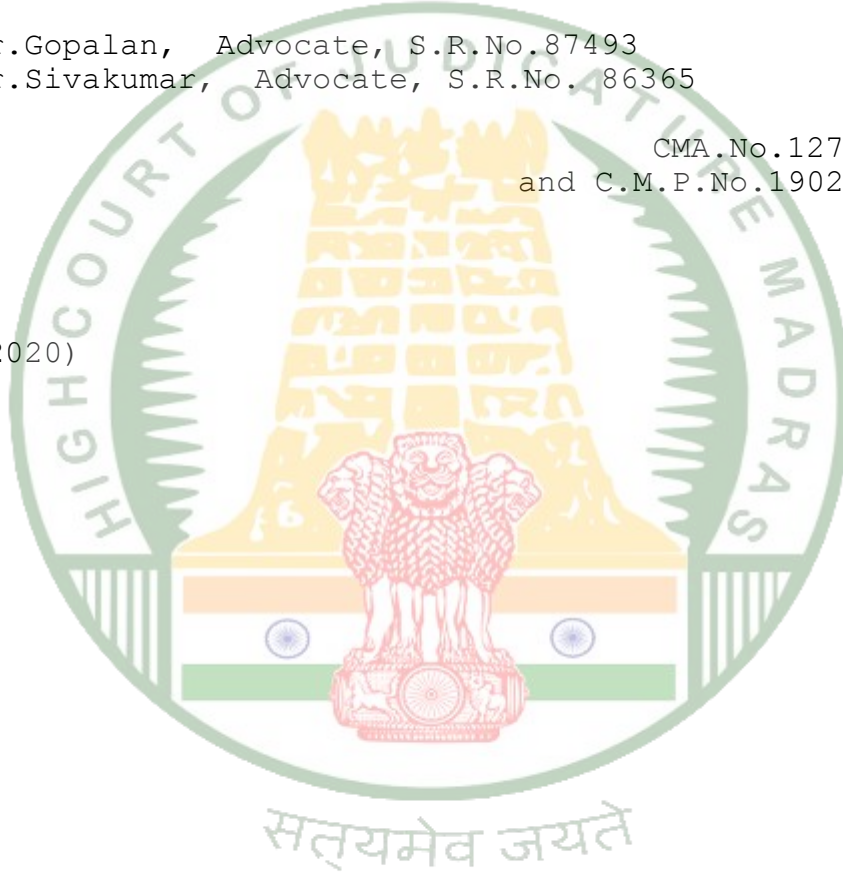
Copy To

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

+1cc to Mr.Gopalan, Advocate, S.R.No.87493
+1cc to Mr.Sivakumar, Advocate, S.R.No.86365

CMA.No.1273 of 2009
and C.M.P.No.19029 of 2019

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



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