

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2019
PRONOUNCED ON : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1202 of 2011
and
M.P.No.1 of 2011

M/s.Oriental Insurance Company Limited,
Salem. ...Appellant/2nd Respondent

.. Vs ..

1.V.Sasirekha ...1st Respondent/Petitioner
2.V.Nalini ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 07.05.2009 made in M.C.O.P.No.37 of 2006, on the file of the Motor Accidents Claims Tribunal (Chief Judicial - Judge), Salem District.

For Appellant : Mr.J.Chandran
For R1 : Mr.S.P.Yuvaraj
For R2 : No appearance
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JUDGMENT

The Insurance Company is the appellant herein and challenging the award passed in MCOP.No.37 of 2006, dated 07.05.2009, on the file of the Motor Accidents Claims Tribunal (Chief Judicial - Judge), Salem District, the appellant has come up with the present appeal.

2 The first respondent herein is the claimant, who filed the claim petition before the Tribunal alleging that on 11.10.2004, at 8.30 a.m., the first respondent herein/claimant as a pillion rider and her neighbour - second respondent herein viz., Nalini were proceeding from Kannankurichi to Hasthampatty in a Bajaj Sunni Moped bearing Registration No. TN-30-B-0883. The second respondent herein drove the vehicle in a rash and negligent manner without observing the traffic rules and without blowing the horn. At that time, a cyclist came from South to North near Hasthampatty rountana. The second respondent herein without seeing the on coming cycle hit the cycle. As a result of which, both the respondents herein were fell down from the Bajaj Sunni Moped due to which, the second respondent herein sustained simple Injury and the

first respondent herein/claimant got grievous injuries all over the body and got fracture in Tibia bone and left knee. Immediately, first respondent herein/claimant was admitted at Sri Sellappa Hosiptal, Salem, where she was treated as an inpatient and she was taking treatment for more then one month as an inpatient. It is stated in the claim petition that still she is taking treatment as an out patient and she has spent a sum of Rs.70,000/- as medical expenses.

3 At the time of the accident, the age of the first respondent/claimant was 53 years, she was working as a teacher at Government High School, Kamalapuram, Omalur, Salem District. She is a M.A.M.Ed, Post Graduate. She was getting a Salary of Rs.13,000/- per month. Due to the accident, the first respondent herein /claimant is not able to stand and teach the lessons to the students continuously. Due to the accident and fear, the petitioner is not able to concentrate the teaching profession. The Doctor has given the opinion that it is very difficult for reunion of the Tibia bone. Further, till date she is getting pain in the knee and she is not able to walk continuously and finding very difficult to climb in the staircase and board the bus. The knee become permanently disabled.

4 Before the Tribunal, the appellant herein/Insurance Company has filed counter statement, denying the liability, age, avocation and alleged income of the injured and also subsequently raised a plea that as the claimant travelled in the two wheeler as a pillion rider and the Policy of Insurance for the motor cycle is only a third party Insurance, the Insurance Company cannot be mulcted with liability.

5 Before the Tribunal, Sasirekha/first respondent herein, herself examined as PW1 and Dr.Kamalanathan was examined as PW2 and documents Ex.P1 to P15 were marked. On behalf of the respondents, second respondent herein/Nalini was examined as RW1 and Shivabalan, who belongs to Insurance Company, was examined as RW2 and Exs.R1 and R2 were marked.

6 Taking into consideration, both the oral and documentary evidence adduced before the Tribunal, the Tribunal has come to the conclusion that due to the rash and negligent driving on the part of the second respondent, the accident had taken place and in the accident, the first respondent herein/claimant has suffered injuries and also fixed the disability suffered by the PW1/claimant disability at 20% and accordingly awarded a compensation of Rs.3,15,428/-.

7 It is seen from the records that before the Judicial Magistrate Court, the rider of the two wheeler was acquitted. However, taking into consideration the evidence of the injured, who is in other words an eye witness, the Tribunal held that the accident had taken place due to the rash and negligent driving of the driver of the Bajaj Sunni Moped and

such a finding does not warrant any interference at the appellate stage. Since, the standard of proof that is required before the Criminal Court is that the facts is to be not proved beyond reasonable doubt, resulted the accused had been acquitted. While, the standard of proof of fact that is required to be proved before the Motor Accidents Tribunal is that the preponderance of probability and hence, the finding of the Tribunal is that of the accident had taken place due to the fact that suddenly a person has crossed the middle of the road and to avoid the accident in dashing the person, the driver of the Bajaj Sunny Moped has suddenly applied the brake. The claimant/PW1, who was seated in the back seat/pillion rider of the two wheeler fell down from the vehicle and sustained injury and accordingly taking note of the manner of the accident, the finding recorded by the Tribunal is hereby confirmed, as the same does not suffer from any illegality or irregularity warranting interference in this appellate stage.

8 On the point of quantum, it appears that based upon the evidence of PW2/Doctor and Ex.P8/discharge summary, the Tribunal has held that the first respondent herein/claimant has suffered 20% disability and accordingly, awarded a compensation. The compensation awarded on the other heads also appears to be just and fair and hence, the quantum of compensation of Rs.3,15,428/- awarded by the Tribunal is reasonable and this Court does not warrant any interference and the same is hereby confirmed.

9 On the point of liability, the learned counsel for the appellant/Insurance Company contended that as per Ex.R2/Policy of Insurance, the two wheeler was covered with policy for a third party only and the claimant having travelled in the vehicle viz., two wheeler as pillion rider, the Insurance policy coverage given under Ex.R1 does not extend to the pillion rider and only a third party can claim against the Insurance Company. The learned counsel for the first respondent/claimant would contend that the policy is a comprehensive policy.

10 After hearing both the parties and a perusal of Ex.R2/Policy of Insurance coverage, provided by the second respondent herein, appears to be only a third party policy and hence, admittedly, the claimant having travelled in the two wheeler who met with an accident is pillion rider and hence, cannot come under the category of third party and hence, the Insurance Company cannot be fastened with liability and hence the liability of the Insurance company, as fixed by the Tribunal is erroneous and the same is hereby stands vacated. The Insurance Company - appellant, is relieved from the liability. It is open to the first respondent herein/claimant to claim compensation from the second respondent herein (owner of the vehicle).

11 In the result, the Civil Miscellaneous Appeal is allowed to the limited extent that the appellant/Insurance company is not liable to pay the compensation. However, the quantum of compensation fixed by the Tribunal is confirmed and the second respondent is hereby directed to deposit award amount before the Tribunal in M.C.O.P.No.37 of 2006, within a period of twelve weeks from the date of receipt of a copy of this order. The learned counsel for the appellant/Insurance Company would submit that perusing to the interim order passed in MP.No.1 of 2011 in C.M.A.No.1202 of 2011, dated 06.06.2011 the Insurance Company has deposited entire award amount and the claimant also withdrawn the same. It is open to the Insurance Company to recover the same in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal,
(Chief Judicial - Judge), Salem District.
- 2.The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.No.1202 of 2011

A.SK(21/07/2020)