

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.1696 OF 2009

AND

M.P.NO.1 OF 2009

M/s.National Insurance Co. Ltd,
Karthikeya complex, Mettur Road,
Bhavani.

...Appellant/3rd respondent

Vs

1.P.Ganesan
2.Manokaran
3.Palanisamy

...Respondent/Petitioner

...Respondents/Respondents 1 & 2

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 30.10.2008 made in M.C.O.P No.77 of 2006 on the file of the Motor Accident claims Tribunal (Subordinate Judge) at Bhavani, Erode District.

For Appellant : Mrs.R.Sreevidhya

JUDGMENT

This appeal has been preferred against the order and decree dated 30.10.2008 passed by the Motor Accident claims Tribunal (Subordinate Judge) at Bhavani, Erode District, in MCOP.NO.77 of 2006.

2.The case in brief, is as follows:

On 21.12.2005 at about 8.45 a.m, when the first respondent/claimant was walking on Salem to Komarapalayam Road, a motorcycle bearing Registration No. TN-34-5031 belonging to the third respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit the first respondent from behind. Due to the said impact, the first respondent sustained multiple and grievous injuries. Immediately he was admitted to Komarapalayam Government Hospital. Stating so, he filed a claim petition claiming a sum of Rs.3,00,000/- as compensation. On a consideration of the materials and evidence

available on record, the Tribunal has awarded a total compensation of Rs.1,05,000/- with interest at the rate of 6% p.a., from the date of petition. The said compensation shall be payable by the appellant insurance company with a right to recover the same from the owner of the vehicle. Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

3. The learned counsel for the appellant submitted that the rider of the motorcycle did not possess valid driving license to ride the vehicle at the time of accident and in such circumstances, the Tribunal ought to have exonerated the appellant insurance company from its liability to pay compensation. The learned counsel also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

4. Heard the learned counsel on the side of the appellant and perused the materials available on record carefully and meticulously.

5. Though this appeal was admitted way back in the year 2009, the appellant has not taken proper steps to serve papers on the other side even at this length of time. However, considering the passage of time, this Court is inclined to proceed with the appeal on merits.

6. Before the Tribunal, the first respondent/claimant/injured examined himself as P.W.1, who has deposed that on 21.12.2005, while he was walking on the left side of the Road, the rider of the two wheeler came in a rash and negligent manner and hit the first respondent/claimant from behind and he was the tortfeasor. The testimony of P.W.1 was supported by Ex.P1-First Information Report. It was put forth on the side of the appellant insurance company that the rider of the motorcycle did not possess valid driving licence at the time of accident and hence, the owner of the vehicle has violated the policy condition. In support of the said contention, R.W.1/Babu was examined, who has stated in his chief examination that the rider of the two wheeler drove the vehicle without valid driving licence. R.W.2/Rajendran, Junior Assistant attached to the Regional Transport Office, has deposed in his evidence that at the time of registration of the vehicle involved in the accident, no driving licence was produced by the owner of the vehicle. Taking note of the above evidence and materials and also considering Ex.P2-rough sketch, Ex.P3-observation mahazar and Ex.P4-motor vehicle inspector's report, the Tribunal has arrived at the conclusion that the accident had happened due to the rash and negligent act on the part of the rider of the two wheeler, who rode the vehicle without any valid driving licence, which was

violative of the policy condition. However, considering the fact that the insurance policy was in force, the Tribunal has rightly directed the appellant insurance company to pay compensation to the claimant first and then, recover the same from the owner of the vehicle, which this Court is not inclined to interfere.

7.As regards the quantum of compensation, the first respondent/claimant as P.W.1 has stated that at the time of accident, he was earning a sum of Rs.6,000/-per month and due to the injuries, he could not do his work as before. P.W.2/Dr.A.K.Thambiraj has deposed about the injuries sustained by the claimant, according to whom, the claimant sustained fracture in his leg and he finds discomfort to walk and he suffered with 60% disability. Ex.P7 is the disability certificate. However, the Tribunal has taken the disability only at 50% and awarded Rs.75,000/- by granting Rs.1,500/- per percentage of disability. Further, the Tribunal has awarded Rs.25,000/- Rs.2,000/-, Rs.3,000/- towards Pain and suffering, Transportation charges and Extra nourishment respectively. The compensation so quantified on the said heads are just and very reasonable and hence, the same do not call for any interference by this Court.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit to the savings bank account of the first respondent/claimant through RTGS within one week thereafter. It is needless to state that the appellant insurance company can recover the compensation paid to the first respondent/claimant from the owner of the vehicle in accordance with law.

Sd/-

Assistant Registrar(Admin II)

//True Copy//

Sub Assistant Registrar

srk/smn/rk

To

1. The Motor Accidents Claims Tribunal
Subordinate Judge, Bhavani.

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

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.75790

C.M.A.No.1696 of 2009
and
M.P.No.1 of 2009

RSV(CO)
CS/04/03/2020



WEB COPY