

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3120 of 2010 and
M.P.No.1 of 2010

The New India Assurance Co. Ltd.,
No.251, Thiruvottiyur High Road,
2nd Floor, Tondiarpet,
Chennai-21.

... Appellant / 2nd Respondent

vs.

1.A.Harikrishnan
2.C.Ramji

... 1st Respondent / Petitioner

... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 09.06.2010 made in MACTOP.No.2362 of 2007 on the file of the Motor Accident Claims Tribunal / VI Judge, Court of Small Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mrs.Ramya Rao [R1]

[R2]

Given up in MP.No. 1/2010

J U D G M E N T

The appellant / New India Assurance Company Ltd., is the second respondent in M.C.O.P.No.2362 of 2007 on the file of the Motor Accident Claims Tribunal / VI Judge, Court of Small Causes, Chennai. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident which took place on 17.02.2007.

2. The case of the claimant in nutshell is as follows:

On 17.02.2007, the claimant/1st respondent herein was travelling as a pillion rider in a Motor Cycle bearing Registration No.TN-01-W-3102 belonging to the 2nd respondent herein and insured with the present appellant along TTK Road, and when he was nearing Alwarpet bridge, the rider of the motorcycle rode the vehicle rashly and hit an auto rickshaw which was proceeding ahead of claimant's motor cycle, as a result whereof, the claimant fell down from the motor cycle and

sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the motor cycle belonging to the 2nd respondent was the cause for the accident and that since the said vehicle was insured with the present appellant, the 2nd respondent/owner of the motor cycle and the insurer are jointly and severally liable to pay compensation.

3. The learned VI Judge, Court of Small Causes / Motor Accident Claims Tribunal, Chennai while awarding compensation of Rs.3,54,855/- together with interest at the rate of 7.5% per annum to the claimant, also concluded that since the driver of the motor cycle was not in possession of a valid driving licence on the date of the accident, the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the motor cycle. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Mrs.Ramya Rao learned counsel appearing for the 1st respondent. No appearance for the 2nd respondent.

5. In the decisions in (i) New India Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna and another vs. Divisional Manager, The Oriental Insurance Co. Ltd., and others in Civil Appeal No. 8144 of 2018, reported in 2018 (2) TN MAC 151 (SC), and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

6. In the facts and circumstances of the present case, the award passed by the Tribunal directing the New India Assurance Company to pay the award amount in the first instance and then recover the same from the owner of the motor cycle is perfectly in order.

7. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimant. A perusal of the award also shows that it is not on

the higher side and in the facts and circumstances, the appeal fails and it is liable to be dismissed.

8. In the result,

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

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / New India Assurance Company is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.3,54,855/- (less the amount already deposited if any) 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 M.C.O.P.No.2362 of 2007 on the file of the Motor Accident Claims Tribunal(VI Judge, Court of Small Causes) at Chennai, within a period of four weeks from the date of receipt of a copy of this judgment and then recover the same from the owner of the Motor Cycle bearing Registration No. TN-01-W-3102 on the same cause of action.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
(VI Judge, Court of Small Causes),
Chennai.

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

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.90294

+2cc to Mr.A.M.Viswanatha Rao, Advocate, S.R.No. 40138

CMA.No.3120 of 2010 and
M.P.No.1 of 2010

PPA(CO)
GN(27/08/2020)