IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1334 of 2015
and
M.P.No.1 of 2015

M/s.New India Assurance
Company Limited,
39-C, Bye pass road,
Dharmapuri 636 701. Appellant/Respondent II

Vs

1.Minor.Jagadish 1st Respondent/Petitioner

2.Sivakumar 2nd Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.84 of 2012 dated 19.08.2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Harur.

For Appellant : Mr.J.Chandran

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No. 84 of 2012 dated 19.08.2014, on the file of the Motor Accident Claims Tribunal, the Subordinate Judge, Harur. The appeal has been preferred by the appellant/ Insurance Company, aggrieved against the award made by the Tribunal at Rs.3,33,000/- against the claim of Rs.10,00,000/-.

2. The brief facts leading to the claim petition is that on 04.08.2012, at about 13.45 hours, when the minor claimant was standing in the extreme right side of the Hanuman Theertham- Theerthamalai road, i.e., mud portion of the road, at that time, a motorcycle bearing Registration No. TN 29 AW 7302 belonging to the second respondent herein which came in the same direction in a rash and negligent manner without following any traffic rules and regulations, hit against the minor claimant. As a result of which, the claimant sustained grievous and simple injuries on his vital part of the body. Hence, the claimant claimed a sum of Rs.10,00,000/- as compensation as against the owner of the vehicle/second

respondent herein as well as the insurer of the offending vehicle, viz., the appellant herein.

3. The Tribunal after analysing the oral pleadings and evidence on record has concluded that the accident occurred only due to the rash and negligent riding on the part of the rider of the motorcycle bearing Registration No.TN 29 AW 7302 and since the second respondent being the insurer of the said vehicle has liable to pay the said compensation. The Tribunal has awarded a compensation of Rs.3,33,000/- together with interest at the rate of 7.5% to the minor claimant, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Permanent disability	75,000.00
2.	Pain and sufferings	25,000.00
3.	Medical bills	2,03,000.00
4.	Attender charges	10,000.00
5.	Nutritious and Healthy food	10,000.00
6.	Transportation	10,000.00
	Total	3,33,000.00

4.Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5.In the grounds of appeal, it is contended that the finding of the Tribunal in holding that the rider of the motorcycle riding the same slowly, cautiously, observing all the rules of the road, with sounding horn, at that time, the claimant who was standing on the right side of the road, all of a sudden without hearing the horn given by the rider of the motorcycle, has not anticipated that the petitioner would start to cross the road suddenly. However, the claimant came and contact with the offending vehicle and invited the accident. Hence, the claimant is solely responsible for the accident and therefore, the appellant is not liable to pay any compensation to the petitioner and prayed for dismissal of the claim petition.

6. Heard, on the side of the appellant and perused all the materials available on record.

7. The Tribunal without discussing the evidence of RW.1 and RW.2 and Exs.R1 and R2, the rider of the motorcycle has possessed the valid driving licence at the time of the accident and the liability fixed by the Insurance Company is highly improper. There is no violation of Rules and terms and conditions of policy, the Tribunal ought to have exonerated

the liability against the appellant/ Insurance Company. The Tribunal has erred in fixing the liability on the part of the appellant herein. Hence, the appellant/ Insurance Company sought for setting aside the findings of the Tribunal. Apart from that, the award made by the Tribunal under various heads are highly excessive.

8.The learned counsel further contended that there is no fault on the part of the rider of the said motorcycle. The rider of the said motorcycle has a valid driving licence to drive the said motorcycle and the other aspect relating to the age and occupation, which is not clearly proved before the Tribunal. The Insurance Company need not be liable to pay the compensation. Otherwise, the Insurance Company ought to have paid the compensation and to recover the same from the owner of the said vehicle.

9. Before the Tribunal, on the side of the respondent, Exs.R1 and R2 were marked and two witnesses were examined, which were clearly stated that the accident occurred due to the rash and negligent riding on the part of the rider of the said motorcycle. There is no proof filed by the first respondent to prove that he possessed a proper and valid driving licence and the liability fixed on the appellant / Insurance Company is not proper. Hence, the liability fixed on the appellant/Insurance Company is set aside. There is a clear evidence by stating that "There is no proof that the rider of the motorcycle possessed a valid driving licence at the time of the accident". Hence, the finding of the Tribunal is liable to be set aside.

10. This court is of the opinion that when the rider of the motorcycle was not in possession of a valid driving licence, the Tribunal should have directed the Insurance Company to pay the compensation amount and then ought to have ordered to recover the same from the owner of the motorcycle/ second respondent and that the Tribunal has committed an error in directing the appellant to pay the entire compensation amount to the claimant. In view of the same, the Insurance Company is directed to pay the compensation to the claimant and then recover the same from the owner of the motorcycle bearing Registration No. TN 29 AW 7302.

11.While verifying sums awarded under the heads of Permanent disability, Pain and sufferings, Medical bills, Attender charges, Nutritious and healthy food and Transportation, which are all very much reasonable by assessing the said documents and evidence. Thus, the Tribunal has arrived at the total compensation at Rs.3,33,000/- payable by the appellant herein to the claimant. The yardstick adopted by the Tribunal in arriving at the quantum is based on settled principles of law and second schedule of the Motor Vehicles Act and hence, the same need not be interfered with. The finding on the negligence as well as the quantum is hereby confirmed in addition to pay and recovery.

12.In the result, this Civil Miscellaneous Appeal, filed by the Insurance Company, is partly-allowed, directing the Insurance Company / appellant herein to pay the compensation to the respective claimant (at first), with liberty to recover the amount from the insured / owner of the two wheeler. No costs. Consequently, connected Miscellaneous Petition is closed.

13. The appellant-Insurance Company is directed to deposit the award amount(s) along with interest and costs, less the amount(s) already deposited, if any, 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 deposited amount to the Savings Bank Account of the claimant / first respondent herein, forthwith, through RTGS, as per the ratio of apportionment made by the Claims Tribunal. The minor claimant/ first respondent herein would have attained majority by now and hence, on such application being taken out by them, the guardianship may be discharged and their share can be transferred to their Savings Bank Account.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

vkr

To
1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Harur.

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

C.M.A.No.1334 of 2015
and
M.P.No.1 of 2015

KK(CO)
GMY(12/06/2020)