

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019
PRONOUNCED ON : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1137 of 2012
and
C.M.P.No.1 of 2012

Bajaj Allianz Insurance Company Limited,
Registered Office, G.E.Plaza,
Airport Road, Yerwada,
Pune 411 006. ...Appellant/2nd Respondent

.. Vs ..

1.A.Basawaraj ...1st Respondent/Petitioner
2.Srinivasan ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 26.09.2011 made in M.C.O.P.No.187 of 2006, on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

For Appellant : Mrs.Elveera Ravindran
for Mr.S.Manohar
For R1 : Mr.M.Selvam
For R2 : Ex-parte

JUDGMENT

The Insurance Company is the appellant herein. Challenging the award passed in M.C.O.P.No.187 of 2006, on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur, on the ground of liability and also on the negligence fixed on the part of the owner of the offending vehicle insured with the appellant herein/Insurance, the Insurance Company has come up with this appeal.

2 The first respondent herein filed MCOP.No.187 of 2006, alleging that on 01.05.2006, at Hosur town in Hosur to Ram Naikan Lake Road near Ram Nagar junction Road, while the first respondent herein was riding his motor cycle bearing Registration No.KA-03-S-6292 in Ram Naikan Lake Road to go to his house near Government Hospital, slowly carefully keeping to

the left extreme end of the road, at that time at about 12-00 Noon the Bajaj CT 100 motor cycle bearing Registration No. TN-24-Y-5530 belonging to the second respondent herein, driven by himself rashly and negligently at a great speed, came opposite to the first respondent herein, dashed against the first respondent herein and his motor cycle knocked both of them down. Due to the accident, the first respondent herein sustained fractures in Bilateral lefort II, Nasal Bone, Dento-Alveolar and multiple injuries all over the body. He was immediately taken to NIMHANS (National Institute of Mental Health and Neuro Sciences) Bangalore and from there to St. John's Hospital, Bangalore and admitted there as an inpatient; though operation was done to the first respondent herein by open reduction and internal fixation with miniplates and screws, arch bar fixations and internal maxillary fixation also with plastic surgery; due to the fractures, the first respondent herein very often gets severe head ache and giddiness. He speaks incoherently, not able to eat any hard food, also disfiguration of face is caused, thus a permanent disability is caused to the first respondent herein due to the accident.

3 The appellant herein/Insurance Company filed counter statement before the Tribunal, denying the liability of the Insurance Company on the ground that there is a violation of Policy condition and further stated that after investigation, the Investigating officer of the Traffic Police, Hosur filed the Final Report before the Judicial Magistrate No. II, Hosur, stating that the complaint lodged by the first respondent herein is false; the accident occurred due to the negligence of the first respondent herein and for claiming compensation, he had lodged false complaint against the second respondent herein and hence, the Charge sheet was not filed against the second respondent herein and further the Investigation Officer stated that it is a MISTAKE OF THE FACT and the criminal case against the second respondent herein is closed.

4 Before the Tribunal, on behalf of the claimant, claimant himself was examined as PW1 and Dr.T.V.Gandhi was examined as PW2 and Exs.P1 to P22 were marked. On behalf of the respondents One Ravichandran, who is one of the staff from Insurance Company was examined as RW1 and Exs.R1 to R3 were marked.

5 On consideration of both oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligence on the part of the second respondent herein/driver & owner of the Bajaj Motor Cycle and awarded a sum of Rs.2,14,320/- and hence, the appeal by the Insurance Company.

6 Heard both parties and perused the documents.

7 It is seen from the Ex.R1/Final Report filed by the Inspector of Police after investigation, the Investigating officer of the Traffic Police, Hosur filed the Final Report before the Judicial Magistrate No. II, Hosur stating that the complaint lodged by the first respondent herein/claimant is false, the accident occurred due to the negligence of the first respondent herein and further the Investigation Officer stated that it is a MISTAKE OF THE FACT and the criminal case against the second respondent herein is closed and it is also sent along with RCS. The Inspector of Police has also filed rough sketch. From the rough sketch, it could be seen that scene of the crime has occurred in the North-East corner while negotiating the curve. It appears that the vehicle travelled by the claimant was bearing Registration No. KA-03-S-6292, went out of the middle of the road and dashed against the on coming vehicle driven by the second respondent herein.

8 Taking into consideration the evidence of PW1 and also the fact that Ex.R1/Referred Charge Sheet filed by the Inspector of Police and in the absence of any other independent witness being examined as occurrence witness, to that extent and with reference to the rough sketch, that was annexed with the RCS-Referred Charge Sheet and the scene of the Crime as discussed supra, this Court is of the considered view that both the drivers of the two wheeler have equally contributed to the accident and also taking note of the fact that the head on collision of two wheeler has taken place in the middle of the road in the curve area and hence, this Court finds that both the driver of the two wheelers have contributed negligence at 50:50 and the contra finding rendered by the Tribunal fixing entire liability on the second respondent herein is hereby set aside and held that contributed negligence by the driver is fixed at 50% each.

9 On the point of quantum of compensation, both the parties are heard and I have perused the documents.

10 Taking into consideration the evidence of PW2/doctor, who had issued Ex.P8/Disability Certificate and the nature of injury that has been reflected in the Discharge Summary issued by the NIMHANS under Ex.P7 and P8, the Disability is fixed at 45% by the Doctor and the same is adopted by the Tribunal and the Tribunal has granted a compensation of Rs.90,000/- under the head of Disability and the compensation awarded under the various heads viz., transportation, nutrition and extra nourishment, medical expenses are appears to be reasonable and

fair. Hence, the quantum of compensation arrived at by the Tribunal is fair and reasonable and the same is hereby confirmed.

11 It is seen from Ex.P4/Driving Licence of the claimant and that while Ex.P12 is the Driving Licence of the first respondent, which was insured with the appellant herein/Insurance Company, this Court holds that there is no violation of policy condition as the driver of the offending vehicle, viz., second respondent herein had valid driving license and hence both the owner the vehicle/second respondent as well as the insured/appellant herein are jointly and severally liable to pay the compensation on the percentage fixed above.

12 Accordingly, appellant herein/Insurance Company and the second respondent herein are directed to pay the award amount viz.,Rs.2,14,320/- granted by the Tribunal in the ratio of 50% : 50% each. The Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above.

13 In the result:

(i) Civil Miscellaneous Appeal filed by the appellant herein/Insurance Company is partly allowed to the limited extent.

(ii) The award amount will carry interest at the rate of 9% per annum.

(iii) The appellant/Insurance Company and the second respondent herein are directed to deposit the award amount as ordered by this court (viz., 50% of Rs.2,14,320/- = Rs.1,07,160/-), within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by this Court with proportionate interest, less the amount already withdrawn, if any.

(v) No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Sub Court, Hosur.

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

+1cc to M/s.M.Selvam, Advocate Sr.67766

+1cc to M/s.S.Manohar, Advocate Sr.67525

C.M.A.No. 1137 of 2012

cnr[co]
srg 03/06/2020