

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1847 of 2011 and
M.P.No.1 of 2011

The National Insurance Co. Ltd.,
rep. by the Branch Manager,
1st Floor, Karthikeya Complex,
403, B-10, Mettur Main road,
Bhavani, Bhavani Taluk,
Erode District.Appellant/2nd Respondent

Vs.

1.K.Rajendran 1st Respondent/Petitioner
2.P.Ravikumar 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 13.04.2009, in M.C.O.P.No. 282 of 2007 on the file of the Motor Accidents Claims Tribunal and Fast Track Court No.4, Bhavani, Erode.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.C.Kulanthaivel
for R1
No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 282 of 2007, on the file of the Motor Accidents Claims Tribunal and Fast Track Court No.4, Bhavani, Erode.

2. The brief case of the first respondent/claimant is as follows:

On 13.11.2006, at about 10.00 am, the first respondent/claimant was travelling in his motorcycle bearing Registration No. TN 33 AD 6260 along with one Kannupaiyan from north to south on Bhavani - Erode main road, near Madurai Veeran Temple,

Sunnanbu Odai. At that time, the second respondent herein drove his motorcycle bearing Registration No. TN 36 J 8402 in a rash and negligent manner and came behind the first respondent/claimant and dashed him, as a result of which, the first respondent/claimant fell down from his motorcycle on the left side of the main road. As a result of the said accident, the first respondent/claimant got fracture in his right side wrist, right knee and bleeding injury all over the body. According to the first respondent/ claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 36 J 8402 was the cause of the accident, and that, since, the said motorcycle was insured with the present appellant, both the owner of the motorcycle bearing Registration No. TN 36 J 8402 and the present appellant, are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

3. The National Insurance Company Limited contested the claim petition. The learned Tribunal after analysing the evidence on record, awarded compensation of Rs.96,300/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant contended that at the time of the accident, the second respondent herein drove the motorcycle bearing Registration No. TN 36 J 8402 alone and he possessed only a learner's driving licence. As per the conditions prescribed in the policy of the Insurance Company, when a person possessing the learner's driving licence is driving his vehicle, he must necessarily accompany a person holding valid driving licence. She would therefore, contend that the second respondent herein drove the vehicle singly, thereby, violated the conditions under Section 3 of the Motor Vehicles Act, 1988. Therefore, since the rash and negligence is proved to be on the second respondent herein, 'pay and recovery' has to be ordered. She would further contend that the compensation awarded under the other heads are also on the higher side.

5. The learned Counsel appearing for the first respondent/claimant submitted that the Insurance Company cannot disown its liability since the learner's licence is also an authorized licence issued under the Motor Vehicles Act, 1988. Relying on the decision in National Insurance Company Limited vs. Swaran Singh & others reported in 2004 1 TN MAC 104 (SC), he contended that the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding

use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time.

6. On going through the orders passed by the Tribunal, it can be seen that the Insurance Company has taken a specific plea before the Tribunal that at the time of the accident, the rider of the motorcycle bearing Registration No. TN 36 J 8402, the second respondent herein possessed only a learner's driving licence and therefore, the Insurance Company cannot be fastened with liability. It is also seen that Charge Sheet Ex(P7) was laid against the second respondent herein for the alleged offences under Sections 279, 338 of IPC and under Section 3 read with 181 of the Motor Vehicles Act, 1988. Duraisamy (RW2), Sub-Inspector of Police has also deposed that the second respondent herein pleaded guilty and paid fine before the Magistrate Court.

7. After hearing both the parties, it could be concluded that there is no dispute in respect of the rash and negligence fixed on the part of the driver of the second respondent herein. The policy of the Insurance Company (Ex.P17) specifically states that any person including the insured, provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence, provided also that a person holding an effective learner's licence may also drive the vehicle and such a person satisfies the requirements of Rule 3 of Central Motor Vehicles Rule, 1989. In view of the same and also taking note of the observations made in the decision in National Insurance Company Limited vs. Swaran Singh & others reported in 2004 1 TN MAC 104 (SC) (cited supra) and the evidence available on record, this Court is of the considered view that the Insurance Company has proved in the manner known to law that at the time of the accident, the second respondent herein drove the motorcycle without assistance of a person with valid driving licence, Therefore, this Court finds that this is a fit case for ordering 'pay and recovery'. Accordingly, the award passed by the Motor Accidents claims Tribunal, Fast Track Court No.4, Bhavani, Erode is hereby modified.

8. Quantum of Compensation: Dr.R.Krishnasamy (PW3) has assessed the permanent disability as 40% and the Tribunal has awarded only a sum of Rs.35,000/-. This court is of the considered view that awarding a sum of Rs.1,500/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.60,000/- is awarded towards permanent disability.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.96,300/- to Rs.1,21,300/-. The order passed by the Tribunal with regard to liability is modified and 'pay and recovery' is ordered.

(iii) The present appellant - National Insurance Company Limited is directed to 'pay' the enhanced compensation amount i.e., Rs.1,21,300/- (less the amount already deposited) 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. 282 of 2007, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Bhavani, Erode within a period of eight weeks from the date of receipt of a copy of this order and then to 'recover' the same from the second respondent herein, in the suitable manner known to law.

(iv) The first respondent/claimant is directed to pay court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Fast Track Court No.4,
Bhavani,
Erode.

+1cc to M/s.N.B.Surekha, Advocate Sr.15771
+1cc to Mr.C.Kulanthaivel, Advocate Sr.15434

C.M.A.No.1847 of 2011 and
M.P.No.1 of 2011

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srg 24/01/2020