

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.164 of 2012

and

M.P.No.1 of 2012

M/s.United India Insurance Co.Ltd.,
Represented by its Manager,
Micro Office, Gandhi Nagar,
Krishnagiri. ... Appellant/2nd Respondent

Vs.

1.Vaziya (Minor)
(Rep.by his mother and
NF Nasreen w/o.Syed Absar) ... 1st Respondent/Petitioner

2.Mr.K.P.Krishnaiah Chetty ... 2nd Respondent/1st Respondent
(2nd respondent exparte before
the Tribunal and hence notice
may be dispensed with)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and Decree
dated 09.08.2011 made in M.C.O.P.No.1548 of 2007 on the file of
the Motor Accidents Claims Tribunal (Chief Judicial Magistrate
Court), Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For R1 : No appearance

For R2 : Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the
order and Decree dated 09.08.2011 made in M.C.O.P.No.1548 of
2007 on the file of the Motor Accidents Claims Tribunal (Chief
Judicial Magistrate Court), Krishnagiri.

2. On behalf of the first respondent -minor, the Legal Guardian has presented the M.C.O.P.No.1548 of 2007 alleging that on 27.06.2007 at about 17.30 hours, the minor 1st respondent was walking on the extreme side of the road along with her mother at Old pet near Masque near Babu bai petty shop. At that time, the TVS 50 XL bearing Registration No.TN 29 P 7560 belonging to the 1st respondent and insured with the 2nd respondent was driven by its driver on the opposite direction of the 1st respondent in a rash and negligent manner, without observing any rules of the road, in high speed, lost his control and dashed against the 1st respondent forcibly. Due to the impact, the 1st respondent sustained grievous injuries. On a complaint, a Criminal Case was registered against the rider of the moped in Cr.No.852/2007 of Krishnagiri Town Police.

3. Before the Tribunal, the appellant/Insurance Company filed a counter statement alleging that at the time of the accident, the rider of the TVS XL Moped had no valid driving licence and the accident has occurred only due to the negligence on the part of the minor and hence, prayed for dismissal.

4. The first respondent's mother was examined as P.W.1 and Doctor was examined as P.W.2 and Exhibits A1 to A7 were marked. On behalf of the respondent, since the owner of the vehicle remained exparte under Section 170 petition has been filed and the same was allowed and on behalf of the appellant-Insurance Company one Junior Assistant from the R.T.O office was examined as R.W.1 and driving licence of the two wheeler moped was examined as Exhibit B1 for the purpose to show that at the time of the incident, the driver of the two wheeler moped was having only L.M.V licence not valid driving licence to drive the two wheeler.

5. Based upon the oral evidence of P.W1, P.W.2 and the documentary evidence Exhibits A1, A2 and A6, the Tribunal held that the accident has occurred due to the rash and negligent driving of the driver of the vehicle at that time and on re-consideration and re-appreciation of the evidence, the same is hereby confirmed in the absence of any irregularity.

6. It is seen from the records that P.W.2 Doctor examined the injury and issued the Exhibit A-6 Disability Certificate and stated that P.W.2 the Doctor who examined the 1st respondent also deposed that due to her disablement, she is unable to walk, sit, stand, squat, run, climb on steps and she is unable to play like other children and unable to do work as before and has given Disability Certificate for 40% and the same is marked as Ex.A-6. As per Ex.A-2- wound certificate, the first respondent sustained only one grievous injury, i.e. fracture of right femur and would have suffered a lot due to her pain and sufferings.

7. Hence, the Tribunal has fixed the liability at 40% and awarded a sum of Rs.80,000/- for compensation of her disablement and for 'pain and sufferings' Rs.20,000/- was awarded and for 'transport, expenses on attenders and extra nourishment' Rs.7,000/- was awarded and accordingly, total compensation Rs.1,07,000/- was awarded. On the evidence of P.W.2 - Doctor coupled with Ex.A6 Disability Certificate, I do not find any reasonable ground to interfere with the percentage of disability arrived at by P.W.2 and compensation arrived thereon and accordingly, quantum of compensation is hereby confirmed.

8. The attention of this Court was drawn to the evidence of R.W.1 the Junior Assistant from the office of the Regional Transport and Exhibit B1 which shows that the driver of the vehicle/ moped on the date of the accident had driving licence only to drive four wheeler and not for a two wheeler. Since it is a third party claim and in the decision laid down in AIR 2008 Supreme Court 2218, (Oriental Insurance Co. Vs.Zaharulnisha & Ors'case (supra) is to question whether a person holding a driving licence to ply LMV can ply the scooter a (two wheeler) and answer to that question has been given in negative by the Hon'ble Apex Court and the Apex Court was directed to the Insurance Company to pay the amount of compensation to the claimant and to recover the same from the owner of the offending vehicle. Since, the facts of the case (cited supra), is similar to the present case, this court holds that, in the present case also 'pay and recovery' should be adopted and accordingly, the award of the Tribunal in respect of the rash and negligent and the quantum are confirmed and in respect of liability, the Insurance Company is directed to pay and recover it in the Executive Proceedings.

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 upheld.

(iii) The orders passed by the Tribunal directing the first and second respondents therein to pay the compensation jointly and severally is modified. The present appellant - United India Insurance Company Limited is directed to 'pay' the entire compensation amount awarded by the Tribunal to the first respondent/claimant, and then, 'recover' the same from the owner of the TVS 50 XL bearing Registration No.TN 29 P 7560.

(iv) The present appellant - United India Insurance Company Limited is directed to deposit the entire compensation awarded

by the Tribunal to the credit of M.C.O.P.No. 1548 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

(v) The first respondent/claimant is at liberty to withdraw the same, after following due process of law.

(vi) The United India Insurance Company Limited can 'recover' the same, from the owner of the said motorcycle, after filing Execution Petition, before the Motor Accidents Claims Tribunal, Judicial Magistrate Court, Krishnagiri.

Sd/-

Assistant Registrar(Admin- III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate Court), Krishnagiri.
2. The Section Officer,
V.R.Section, High Court, Chennai-104.

+1 cc to Mr.M.B.Gopalan, Advocate, Sr.No. 24335

C.M.A.No.164 of 2012 and
M.P.No.1 of 2012

MR(CO)
CSL/12.06.2019

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