IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1930 of 2015
& M.P.No.1 of 2015 & CMP No.5879 of 2016

United India Insurance Co. Ltd.,
Divisional Officer, No.5 TKM Complex,
Katpadi Road, Vellore,

Now at Motor Third Party Service HUB,
AR Plaza, No.35,36 & 37, 45,
Feet Road Extension,
Balaji Nagar, Puducherry 605 011

... Appellant/3rd Respondent

..Vs..

1. Paul Radhakrishnan ... 1st Respondent/Petitioner

2. Velmurugan ... 2nd Respondent/ 1st Respondent

3. Kesavan ... Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 24.02.2015 made in MCOP No.303 of 2011 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr. P.Sankaranarayanan

For Respondents : Mr. N.M.Elumalai, for R-1,
No Appearance, for R-2, R3

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance company / Insurer, challenging the findings of the Tribunal on liability.

Brief facts:-

2. The claimant / the first respondent, aged 55, Mason,

earning a sum of Rs.5,000/-, met with an accident on 15.07.2007 at about 01.30 pm at National Highways opposite to Kannigapuram Jayaraman Brick Choolai.

2.1. The first respondent herein was standing in the extreme left of the road and at that time, a Hero Honda motorcycle bearing Registration No.TN23-AS-3163 came in a rash and negligent manner and hit the claimant, due to which, he suffered fractures and multiple injuries all over the body. Claiming a sum of Rs.10,00,000/-, he filed a petition for compensation.

3. The finding of the Tribunal is that the accident took place only on account of the rash and negligent riding on the part of the rider of the two-wheeler. The compensation of Rs.3,47,905/- with interest at the rate of 7.5% per annum from the date of petition has been awarded under the following breakup details:-

Loss of earning during treatment period	-	Rs. 10,500/-
Pain and suffering, extra nourishment & Medical Transportation	-	Rs. 15,000/-
Permanent disability	-	Rs.1,20,000/-
Medical expenses and future medical Bills	-	Rs.2,02,405/-
		Rs.3,47,905/-

4. The main allegation against the claimant is to the effect that the claim was made only on the basis of mentioning a particular vehicle which according to the appellant was not actually involved in the accident. He further submitted that the award of the Tribunal suffers from factual and legal errors.

5. The said contention of the learned counsel for the appellant has no legs to stand, since the appellant failed to take into consideration the deposition of the first respondent / driver who admitted his guilt and paid the fine amount before the Magistrate's Court, which is evident from Ex.P-5, the certified copy of the criminal case judgment. Further-more, no contra evidence was adduced by the appellant herein to show that the accident took place due to some other vehicle, which was not insured with the appellant or the accident was simply due to the negligence on the part of the claimant. Hence, the evidence of P.W.1 is unimpeachable.

6. However, one important aspect, which the Tribunal failed to consider is, with regard to the additional counter, filed by the Insurer / appellant, wherein it is stated as under:

> "... In case of Road traffic accident cases, the way in which injuries were caused: Hit by a two-

wheeler while travelling on a bicycle. 'The FIR filed does not contain the number of the motorcycle involved in the accident and also as per FIR the petitioner was standing during the time of accident. The Police had filed a case against motorcycle bearing Registration No.TN23-AS-3163 which was not involved in the accident.' Hence this respondent is absolved from any liability. Further this respondent states that one Velmurugan was driving the said vehicle and committed the accident. The police failed to take action against this vehicle and filed a false case against the said vehicle....."

8. The Tribunal, though extracted the above passage in the additional counter filed by the appellant, has not rendered any findings to it. To controvert the same, neither the driver nor the owner has entered into the witness box and elicited their reply. In such view of the matter, this Court is of the view that the Insurer should be given liberty to recover the compensation amount from the owner of the motorcycle.

9. Also this Court would like to point out that the burden of proof placed on the Insurer was put on a higher pedestal, making it thereby, virtually impossible for the insurer to avoid liability. In a series of judgments, it was made clear by various High Courts and Supreme Court that such construction of the statute was only in keeping with the mandate of Parliament to ensure that the victims were provided compensation by the insurer rather than be left to the fate of seeking enforcement from the owners of vehicles. The slant of the courts was evident and it was made clear as well that compulsory motor insurance was to provide relief to the victims and if so, the courts have to necessarily lean in favour of this mandate. Hence, the appellant herein is directed to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle.

10. So far as the quantum of compensation awarded by the Tribunal is concerned, it has taken the monthly income of the claimant at Rs.3,500/- and awarded a sum of Rs.10,500/- towards loss of earning during treatment period for three months. The Tribunal has also awarded Rs.15,000/- towards pain and suffering, extra nourishment, transportation expenses and Rs.1,20,000/- towards permanent disability and Rs.2,02,405/- towards medical expenses. Thus the Tribunal has arrived at the total compensation at Rs.3,47,905/-. The quantum arrived at by the Tribunal commensurates with the injuries sustained by the claimant and settled principles of law. Hence the findings rendered by the Tribunal on quantum are confirmed as such.

11. In the result, the Civil Miscellaneous Appeal filed by

the Insurance Company, is partly-allowed. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount 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 / injured / first respondent herein, through RTGS, within one week thereafter. Consequently, the connected MP and CMP are closed.

12. It is made clear that the appellant herein is permitted to recover the compensation amount from the owner of the vehicle / third respondent herein, in the same proceedings. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
   I Additional District and Sessions Judge,
   Vellore.

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

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No. 96424
+1cc to Mr.N.M.Elumalai, Advocate, S.R.No. 96287

C.M.A.No.1930 of 2015
& M.P.No.1 of 2015 & CMP No.5879 of 2016

PM(CO)
GN(26/08/2020)