

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1879 of 2013

and

M.P.No.1 of 2013

The Divisional Manager,
The Oriental Insurance Company Ltd.,
Divisional Office -8,
No.22, D.V.G.Road,
V.C.Plaza, Basavanguri,
Bangalore 4.

.. Appellant/2nd Respondent

Vs.

1.P.Palani
2.V.Shankarappa

.. Respondents /Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2012 made in M.C.O.P.No.118 of 2008 on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Sriram for

Mr.Mukund R Pandian for R1

R2- Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 21.08.2012 made in M.C.O.P.No.118 of 2008 on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.118 of 2008 on the file of Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri. The first respondent filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him, in the accident that took place on 30.12.2006.

3. According to the first respondent, while the first respondent was proceeding in his TVS super XL Moped bearing Registration No. TN 24 B 4386 abiding road rules from Krishnagiri to Hosur in NH7 road near Bathlapalli bus stop, at that time a Tata Indica car bearing Registration No. KA 05 D 4830 belonging to the second respondent and insured with the appellant, driven by its driver in a rash and negligent manner, hit against the first respondent's motorcycle and caused the accident. Due to the accident, the first respondent sustained severe injuries.

4. 2nd respondent remained ex parte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contested that the driver of the car drove the same in a slow manner and abiding road rules. Due to the sudden crossing by the first respondent, the accident has occurred and violated the policy conditions. The driver of the car did not possess valid driving license at the time of accident. Hence, the appellant is not liable to pay any compensation to the first respondent. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined himself as P.W.1 and one Dr. M. Devendiran as P.W.2 and 7 documents were marked as Exs. A1 to A7. On the side of the appellant/Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and 4 documents were marked as Exs. B1 to B4.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the second respondent and directed the appellant/Insurance Company to pay a sum of Rs. 70,000/- as compensation to the first respondent.

8. Challenging the said award dated 21.08.2012 made in M.C.O.P.No.118 of 2008, granting compensation to the first respondent, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the driver of the car drove the same in a slow manner and abiding road rules. Due to the sudden crossing by the first respondent, the accident has occurred and violated the policy conditions. The driver of the car did not possess valid driving license at the time of accident. The first respondent rode the motorcycle in a rash and negligent manner

and suddenly crossed the road and dashed against the car at his own fault. The first respondent is the tort-feasor in the accident. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle/first respondent herein. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Per Contra, the learned counsel appearing for the first respondent contended that the first respondent has examined himself as PW1 and proved that the first respondent crossed the road in a correct manner. The Tribunal appreciating the evidence let in by the first respondent has held that the first respondent crossed the road in a correct manner following the traffic rules. Due to the accident, the first respondent sustained 3rd and 4th metatarsal bone fractures are malunited and suffered joint pain while walking and his toes are not resting on the floor. The assessment of disability by P.W.2 is contrary to the principles. The Tribunal erred in assuming 25% towards permanent disability. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

12. From the materials available on record, it is seen that Ex.A1/First Information Report coupled with the evidence of P.W.1 shows that the Tribunal has analysed the materials on record in detail prospective and has fastened the liability on the appellant herein, which in the opinion of this Court cannot be brushed aside easily. Further, to controvert the evidence of Ex.P.W.1, no other document has been produced by the appellant herein. Further, the first respondent has proved his case, by way of proper documentary evidence through Exs.A1 to A7. Though R.W.1 and R.W.2 have been examined before the Tribunal to disturb the claim of the first respondent, the supporting documents produced by the respondents differ from the same. Further a sum of Rs.70,000/- awarded by the Tribunal, for the injuries sustained by the first respondent is supported by the evidence of P.W.2/Doctor. In such view of the matter, the reasoning recorded by the Tribunal are perfectly justified and there is no ground whatsoever to interfere with the same.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal as compensation to the first respondent/claimant is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of

receipt of a copy of this judgment to the credit of M.C.O.P.No.118 of 2008. On such deposit, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 104173

+1 cc to M/s. Mukund R.Pandian, Advocate Sr.No. 103725

C.M.A.No.1879 of 2013
and
M.P.No.1 of 2013

VGII (CO)
RMP (19/01/2021)

सत्यमेव जयते

WEB COPY