

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2721 of 2011

and

M.P.No.1 of 2011

United India Insurance Company Limited,
No.2, Dr.Sankaran Road,
Namakkal Town. ... Appellant/2nd Appellant

vs.

1.Gopi ...1st Respondent/Petitioner

2.K.Karunanidhi ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.02.2011 passed in M.C.O.P.No.11 of 2009 on the file of the Motor Accident Claims Tribunal / Fast Track Court, Namakkal.

For Appellant : Mr.S.Arun Kumar
For R1 : Mr.C.Thangaraju
For R2 : No appearance

J U D G M E N T

The appellant / United India Insurance Company is the second respondent in M.C.O.P.No.11 of 2009 on the file of the Motor Accident Claims Tribunal / Fast Track Court, Namakkal. The first respondent / claimant filed the claim petition under Section 166 (A) of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 21.07.2008.

2. The case of the claimant is that on 21.07.2008, he was riding his motorcycle bearing Registration No. TN 28 F 3688 on Namakkal - Salem road and at about 16.00 hours, when he was nearing TLS Building, a speeding motorcycle bearing Registration No. TN 28 F 8149 hit his motorcycle, as a result of which, he fell down and sustained multiple injuries.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 28 F 8149 belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant / United India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the motorcycle bearing Registration No. TN 28 F 8149 remained absent before the Tribunal and therefore he was set ex-parte. The United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Judge, Fast Track Court/ Motor Accident Claims Tribunal, Namakkal, after analysing the evidence on record, awarded a compensation of Rs.97,740/- together with interest at the rate of 7.5% per annum to the claimant and directed the United India Insurance Company to pay the compensation amount. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.S.Arun Kumar, learned counsel appearing for the United India Insurance Company contended that though the First Information Report and the final report are against the claimant, the Tribunal held that the rider of the motorcycle bearing Registration No. TN 28 F 8149 was responsible for the accident. His further contention is that the quantum of compensation awarded by the Tribunal is also on the higher side. He therefore prayed for setting aside the order passed by the Tribunal.

6. Per contra, Mr.C.Thangaraju, learned counsel appearing for the claimant drew the attention of this Court to paragraph No.10 of the orders passed by the Tribunal, wherein, the Tribunal has observed that the Criminal Court records cannot bind the Tribunal and that since the United India Insurance Company did not let in any evidence to controvert the evidence adduced by the claimant, it has to be held that the rider of the motorcycle bearing Registration No. TN 28 F 8149 was rash and negligent.

7. In the instant case, the First Information Report and the final report are filed against the claimant. Merely because, the final report is filed against the claimant, it cannot be concluded that the claimant alone was rash and negligent, especially, when the Criminal Court records are not binding on the Civil Court. Moreover, the claimant was acquitted by the learned Judicial Magistrate No.1, Namakkal in CC.No.885 of 2008 as evidenced by a copy of the Judgment (Ex.P10). As far as the

claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the claimant has to prove that the offending vehicle was responsible for the accident and in the instant case, the claimant has clearly deposed that the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 28 F 8149 was the cause of the accident and no contra evidence was adduced by the United India Insurance Company. It is also pertinent to point out that the owner of the offending vehicle did not appear before the Tribunal and was set exparte. In the facts and circumstances, the observations made by the Tribunal fixing negligence on the part of the rider of the motorcycle bearing Registration No. TN 28 F 8149 is perfectly in order.

8. As far as the quantum of compensation is concerned, the claimant has sustained a fracture on his thigh and Dr.Kannappan (PW2) has assessed the partial permanent disability as 35%. The Tribunal has reduced the same to 20% and awarded a total compensation of Rs.97,740/- together with interest at the rate of 7.5% per annum. Considering the nature of injuries sustained by the claimant, the compensation awarded by the Tribunal cannot be said to be on the higher side.

9. In the result,

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

(ii) The orders passed by the Tribunal is upheld.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Fast Track Court,
Namakkal.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.S.Arunkumar, Advocate Sr.95974
+2cc to M/s.C.Thangaraju, Advocate Sr.95918

C.M.A.No.2721 of 2011

rsi[co]
srg 03/12/2020