

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKA RAMAN

C.M.A.No.3103 of 2011 and
M.P.No.1 of 2011

The National Insurance Co. Ltd.,
Branch Office,
78, T.V.S. Street, Erode. ..Appellant / 2nd Respondent

Vs.

1.Duraisamy ..1st Respondent/Claimant

2.R.Subramani ..2nd Respondent/1st Respondent

R2 - Exparte before Tribunal

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 16.06.2008, in M.C.O.P.No. 250 of 2006, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Court), Gobichettipalayam.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.MA.P.Thangavel for R1

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. 250 of 2006, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Court), Gobichettipalayam. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

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

(i) The first respondent/claimant was aged about 45 years, on the date of the accident. He was a self-employed person, working as a 'mason', and was earning a sum of Rs.6,000/- per month.

(ii) On 14.04.2006, at about 16.30 hours, the first respondent/claimant was riding his bicycle on Gobi to Sathy main road, near, Pudu Kothukadu Prakash house, from east to west direction, on the extreme left side of the road. At that time, the rider of the motorcycle bearing Registration No. TN 36 Y 8717 drove the motorcycle behind the first respondent/claimant's bicycle with high speed and in a rash and negligent manner without observing road rules and hit against the first respondent/claimant's bicycle.

(iii) Due to the ill-fated accident, the first respondent/claimant sustained grievous injuries on the right zygome, maxila, head and also sustained injuries on the right leg, left knee, chest and injuries all over the body. Immediately after the accident, the first respondent/claimant was admitted in Viswanathan Hospital, Sathy and subsequently, in Dr.Ranganathan, Hospital Sathy. Immediately after the accident Kadathur Police registered case in Kadathur Police Station in Cr.No. 129 of 2000 under Section 279 and 337 of IPC.

(iv) According to the first respondent/claimant, the accident happened solely due to the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 36 Y 8717, and that, since, at the time of the accident, the first respondent is the owner and the second respondent is the insurer of the said motorcycle, both of them are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

3. The owner of the motorcycle bearing Registration No. TN 36 Y 8717 was absent before the Tribunal, and therefore, he was set ex-parte. The National Insurance Company Limited contested the claim petition by filing a counter statement disputing the age, avocation, income of the injured and contending that the quantum of compensation claimed by the first respondent/claimant is highly excessive. They also disputed the manner of the accident.

4. Before the Tribunal, the first respondent/claimant was examined as PW1 and the doctor who gave treatment to him was examined as PW2 and exhibits P1 to P15 were marked. On behalf of the Insurance Company, RW2, a staff of their Company was examined and Insurance Policy copy (Ex.R1) was marked. The Tribunal has taken note of the charge sheet (Ex.P4) filed by the police, wherein, it has been stated that, at the time of the accident, three persons have travelled in the said motorcycle. On consideration of both the oral and documentary evidences, adduced before the court, the Tribunal has come to a conclusion that, the accident has taken place only due to the rash and negligent driving of the rider of the said motorcycle and awarded a compensation of Rs.1,15,000/- together with interest

at the rate of 7.5% per annum and directed the respondents 1 and 2 therein, to pay the compensation jointly and severally, to the first respondent/claimant. Aggrieved against the said orders passed by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, questioning both the liability as well as the quantum of compensation awarded by the Tribunal.

5. The learned counsel appearing for the appellant/Insurance Company would contend that, at the time of the accident, three persons have travelled in the motorcycle bearing Registration No. TN 36Y 8717 and it is clearly a violation of the policy condition, and hence, the Tribunal should have granted the liberty of 'pay and recover' to the Insurance Company as per the established decisions of the Hon'ble Supreme Court. He would further contend that the application of the multiplier method for the simple injuries sustained by the first respondent/claimant is not necessary and it warrants interference. Therefore, he would contend that, the award passed by the Tribunal is excessive and it should be reduced.

6. Heard the learned counsel appearing for appellant and the first respondent/claimant.

7. After going through the oral and documentary evidences, namely, FIR (Ex.P1), Investigation Report (Ex.P3), Charge Sheet (Ex.P4) and Judgment copy of the Tribunal (Ex.P5), it could be seen that the rider of the said motorcycle has been pleaded guilty under Section 128(1) r/w 177 of the Motor Vehicles Act, 1988 and he has also paid fine. Hence, there is a clear violation of the terms of the policy conditions of the Insurance Company, as could be seen from Insurance Policy (Ex.R1). Therefore, the Tribunal ought to have granted 'pay and recovery', and therefore, the order of the Tribunal, in that regard, is modified. The National Insurance Company Limited is directed to 'pay' the compensation amount to the first respondent/claimant and then it shall 'recover' the same from the owner of the motorcycle bearing Registration No. TN 36 Y 8717, in the Execution Proceedings.

8. Quantum of compensation: Perused the wound certificate (Ex.P2), discharge summary (Ex.P6), scan report (Ex.P7), disability certificate (Ex.P14) coupled with the evidence of the doctor PW2. I find that the PW2 doctor has assessed the 'partial permanent disability' as 28%. The Tribunal has properly considered all the evidences and arrived at a reasonable compensation, which is neither excessive nor exorbitant and therefore, this Court is of the considered opinion that it does not warrant interference, at this juncture.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. 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, with regard to, the liability alone is modified and 'pay and recovery' is ordered.

(iv) The appellant - Insurance Company is directed to deposited the compensation awarded by the Tribunal, i.e., Rs.1,15,000/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 250 of 2006, dated 16.06.2008, on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Court), Gobichettipalayam within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-
Assistant Registrar(CS III)

//True Copy//

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Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Gobichettipalayam. सत्यमेव जयते

copy to : The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to M/s.D.Bhaskaran, Advocate, S.R.No.22434
+1 cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.23768

C.M.A.No.3103 of 2011 and
M.P.No.1 of 2011

vsn-ii (CO)
SSM(10/06/2019)