

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.42 of 2011
and
MP.No.1 of 2011

Bajaji Allainz General Insurance Co.Ltd.,
No. 25/26,
Prince Towers, IV Floor,
College Road, Nungambakkam,
Chennai-600 006.

... Appellant/2nd respondent
vs.
1.K.Manoharan .. Respondent/ Petitioner
2. Mukesh
... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 10.11.2009 in M.C.O.P.No.374 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ponneri.

For Appellant : Ms.S.Arunkumar

For Respondents : Mrs.Subadra
for Mrs.Malar
for R1.
R2-Not ready notice.

J U D G M E N T

Bajaji Allainz General Insurance Company, the second respondent in MCOP.No. 374 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ponneri has filed the present appeal challenging the award passed by the Tribunal.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,50,000/- for the injuries sustained by him, in a road accident that took place on 15.03.2005.

3. The case of the first respondent / claimant is that on 15.03.2005, at about 7.30 P.M, when he was riding TVS XL Super Motor Cycle bearing Reg.No. TN-05-M-6017 near Brickline Road Junction, Purasawalkam High road, Chennai, a Motor Cycle bearing Reg No.TN-01-X-9037 came in a rash and negligent manner and hit the first respondent / claimant's Motor Cycle,

as a result of which the first respondent / claimant sustained grievous injuries. According to the first respondent/claimant, the rash and negligent riding of the rider of the Motor Cycle bearing Reg.No. TN-01-X-9037 belonging to the second respondent was the cause of the accident. Therefore, he filed M.C.O.P.No.374 of 2005 seeking compensation of Rs.2,50,000/-.

4. Before the Tribunal, on the side of the first respondent / claimant, PW1 and PW2 were examined and Exs.P1 to P12 were marked. On the side of the respondents therein, RW1 was examined and no documentary evidence was marked.

5. The owner of the Motor Cycle bearing Reg.No. TN-01-X-9037 remained absent before the Tribunal and therefore, he was set exparte. The Bajaji Allainz General Insurance Company contested the claim petition. The learned Subordinate Judge / Motor Accident Claims Tribunal, Ponneri after analysing the evidence on record, awarded a compensation of Rs.68,400/- together with interest at the rate of 7.5% per annum to the first respondent/ claimant.

6. Challenging the said award dated 10.11.2009 made in M.C.O.P.No. 374 of 2005, granting compensation to the first respondent / claimant, the appellant / Insurance Company has come out with the present appeal.

7. The learned counsel appearing for the appellant / Insurance Company contended that the Claims Tribunal in the absence of treated doctor being examined, ought not to have relied on Ex.P4 and oral testimony of P.W.2 to presume that the first respondent sustained fracture in the alleged accident. He further contended that in the absence of evidence to prove that the first respondent/claimant sustained injuries due to the accident that took place on 15.03.2005 the Tribunal ought to have dismissed the claim petition. The learned counsel therefore, prayed for allowing the appeal.

8. Per contra, the learned counsel appearing for the first respondent / claimant contended that the Tribunal, after considering all the materials available on record in proper perspective, has awarded compensation and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant / Insurance Company and first respondent/claimant and perused the materials on record, available before this Court.

10. In the claim petition, it is contended that the first respondent/claimant has sustained injuries due to the accident that took place on 15.03.2005. In order to prove the same, the first respondent/claimant had adduced a copy of Accident Register (Ex.P2) and OP - chit issued by the General

Government Hospital (Ex.P3). The first respondent/claimant had also adduced First Information Report (Ex.P1) and Charge Sheet (Ex.P8) to prove the manner of accident that took place on 15.03.2005. The Tribunal has also gone into this aspect in a detailed manner and after analyzing all the evidences placed before them, has come to a conclusion that the accident took place due to the rash and negligent riding of rider of Motor Cycle bearing Reg No.TN-01-X-9037 and awarded a sum of Rs.68,400/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. In the facts and circumstances, this Court is of the opinion that no interference is required against the award passed by the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The order passed by the Tribunal is upheld. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm

To
The Motor Accident Claims Tribunal,
Subordinate Court,
Ponneri.

Copy to:

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

+1cc to M/s.M.Malar , Advocate SR.No. 101004

A.SK(11/11/2020) C.M.A.No.42 of 2011

WEB COPY