

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.04.2019
Judgment Delivered on : 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.3177 of 2012
and
M.P.No.1 of 2012

The New India Assurance Co.Ltd.,
No.46, Armenian Street, Chennai-1
...Appellant/ Respondent

Vs.

1.C.H.Sayamma
2.S.Karthee ... Respondent/ Petitioner
3.J.Panneerselvam
4.C.H.Venkatasubbaiah
.... Respondents/ Respondents 2 to 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 05.03.2012 in M.C.O.P.No. 3070 of 2008, on the file of the Motor Accidents Claims Tribunal, (Iv Judge, Court of Small Causes), Chennai.

For Appellant :Mr.M.Krishnamoorthy
For R1& R3 : No appearance
For R2 & R4 : Ex-parte before the Tribunal

JUDGMENT

The fourth respondent before the Tribunal/ Insurance Company is the appellant herein, challenging the liability of the Insurance Company and also on the finding regarding the composite negligence fixed on the driver of the vehicle which was insured with the appellant herein.

2. The first respondent herein filed M.C.O.P.No.3070 of 2008 claiming compensation alleging that on 02.06.2007 at about 08.00 hours, while, the claimant was travelling as a pillion rider in a motor cycle bearing Registration No.TN 05 E 9085 along the 70 feet road near Thiyagaraja Residency, Periyar Nagar, Chennai - 82 from South to North, at that time, another motor cycle bearing Registration No.TN 05 H 9146 was driven by its rider in a rash and negligent manner, dashed against the claimant's motorcycle, thereby, the claimant sustained grievous injuries. The rider of the motor cycle (TN 05 H 9146) is responsible for the accident. The first respondent before the Tribunal as the owner and the appellant

as the Insurance Company are jointly and severally liable to pay compensation.

3. The second respondent herein who is the first respondent before the Tribunal have contested the claim and the third respondent remained ex-parte. The appellant/Insurance Company filed a counter statement denying the manner of the accident, age of the claimant, alleged avocation and alleged income of the claimant and also filed petition under Section 170 of the Motor Vehicle Act which was allowed.

4. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 are examined and Exhibits P1 to P12 are marked. On behalf of the Insurance Company, Sub-Inspector of Police was examined as R.W.1 and Exhibits R1 to R3 were marked.

5. P.W.1-the injured person deposed that due to the accident, he has suffered injury. The Tribunal, on a consideration of Exhibit P1-attested copy of F.I.R and Exhibit P2-Rough Sketch, has come to the conclusion that the accident has taken place due to the composite negligence of the rider of both two wheelers and fixed the composite negligence at 60% on the rider of the offending vehicle TN 05 H 9146 and 40% negligence on the rider of the motor cycle TN 05 E 9085 in which, the injured petitioner travelled and the Tribunal awarded compensation of Rs.4,27,000/-

6. Aggrieved by the findings of the Tribunal in fixing 40% negligence on the part of the rider of the motorcycle (TN 05 E 9085), the Insurance Company has preferred this appeal.

7. The learned counsel for the appellant/Insurance Company drew my attention to the evidence of R.W.1 and Exhibits R2 and R3.

8. On a perusal of the evidence of P.W.1, coupled with Exhibit P1 and Exhibit P2-Rough Sketch filed before Criminal Court and also taking note of the place of the accident, namely scene of occurrence, the Tribunal has accepted the version of P.W.1 and held that due to the composite negligence on the part of the driver of both the vehicle, the accident has taken place and fixed the composite negligence in the ratio of 60:40 as stated supra.

9. This Court is of the considered view that in respect of claim petition filed before the Tribunal that the claimant has to prove the manner of the accident and the preponderance of probabilities. Admittedly, no evidence has been taken before the Criminal Court as could be seen from Ex.R3. On the other hand, P.W.1 who is the injured, is the best witness to speak about the manner of the accident and based upon the version of P.W.1, the Tribunal has rightly come to the conclusion that the accident has taken place and fixed composite negligence at the rate of 60:40 which does not call for any interference by this Court and hence, in this view of

the matter, the liability fixed by the Tribunal is hereby upheld and the appeal is devoid of merits.

10. On the point of compensation also, this Court heard both parties.

11. After going through the evidence of P.W.2, coupled with Ex.P3-discharge summary and Ex.P12-disability certificate issued by P.W.2-Doctor, it is seen that P.W.1 has suffered traumatic brain injury and CT brain scan showed evidence of "fracture right parieto temporal and occipital bone without significant depression, pneumocephalus not of much significance clinically, thin streak of SDH right parietal region, ventricular compression and mild effacement of ventricles and there were multiple haemorrhagic contusions in the frontal region."

12. Hence, the disability is assessed at 55% by the Tribunal which appears to be just and fair and compensation awarded thereunder is hereby confirmed. Since the compensation awarded on the other headings appears to be just and reasonable, they cannot be termed as excessive. In this view of the matter, the compensation awarded by the Tribunal is confirmed.

13. In the result,

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

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

(iii) THE 3rd respondent herein and the appellant-Insurance Company are directed to deposit the entire amount awarded by the Tribunal in the ratio of 60:40 together with costs and interest at the rate of 7.5% per annum and if not entirely deposited, the same be deposited after deducting the amount already deposited to the credit of M.C.O.P.No.3070 of 2008 on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The claimant is permitted to withdraw the above amount, in the manner known to law.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(IVJudge, Court of Small Causes), Chennai.
(V

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

+lcc to Mr.M.Krishnamoorthy , Advocate SR.No. 62890

C.M.A.No.3177 of 2012 and
M.P.No.1 of 2012

A.SK(12/02/2020)



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