

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2018

Delivered on :08.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.65 of 2015

and

M.P.No.1 of 2015

M/s.United India Insurance Co. Ltd.,
W-122, III Avenue,
Anbna Nagar, Chennai - 600 040. ... Appellant/Respondent II

Vs

1.K.Muralidharan ...Respondent I/Petitioner

2.Manuel Eleazer ... Respondents II/Respondent I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in MCOP.No.651 of 2010 dated 13.03.2014 on the file of the learned Motor Accident Claims Tribunal (Special Sub Judge-I) at Chennai District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.R.Bharath Kumar (for R1)

JUDGMENT

As against the Award passed by the Motor Accident Claims Tribunal (Special Sub Judge-I dealing with the MCOP cases), at Chennai in M.C.O.P.No.651 of 2010, dated 13.03.2014, the Insurance Company has come out with an Appeal in C.M.A.No.65 of 2015, questioning the liability fixed on the owner of the vehicle, and to pay the compensation on behalf of the owner of the vehicle and to recover the same from him.

2.The facts leading to the filing of the Claim Petition are as follows:-

On 17.12.2018, at about 11.00 Hrs., when the 1st Respondent herein, was crossing the Road at K.H.Road, near Noor Hotel from

North to South, the 2nd Respondent's vehicle, namely HERO HONDA SPLENDER , bearing Registration No.TN 02 E 3404 came from the East - West direction very rashly and negligently and hit the 1st Respondent herein, resultantly he felt unconscious and sustained grievous injuries. Further, the accident happened only due to the rash and negligent act of the vehicle by its rider. The 2nd Respondent herein, being the owner, and the Appellant herein, being the Insurer of the Motor-cycle, both are jointly and severally liable to-pay the compensation.

3.The Claim Petition was opposed by the Appellant herein/Insurance Company, contending that the accident was caused by the careless and negligent act of the Claimant and the 2nd Respondent herein,/ the Claimant is called upon for strict proof of the allegations relating to the nature of injury, period of treatment, loss of income, medical expenses incurred, transportation charges, extra nourishment, disability and loss occurred to him, the Claimant and the 2nd Respondent herein, alone are responsible for the accident and the claims made under various 'Heads' by way of compensation are excessive. It is further contended that the second respondent herein allowed one M. Ranjith, son of Mahendran residing at No.20/35A, Ramanathan Street, Ayanavaram, Chennai-23, to ride the vehicle without driving license and he was a minor at the time of accident ie.,on 17.12.2008 and dashed against the Claimant who sustained injuries. Further, the said accident was reported to K4 Anna Nagar Police Station and the same was registered in Crime No. 669/ASI/2008 and the Traffic Police found that the minor rider was not possessing valid driving license and he was charged under Section 338 of IPC, Section 184 of M.V. Act, r/w Section 181 of M.V. Act and the minor was convicted by the learned XII Metropolitan Magistrate Juvenile Court and paid a fine of Rs.600 on 06.01.2010 in J.C.No.295 of 2009. Furthermore, as the second respondent allowed the minor to ride his own vehicle who was not possessing valid driving license and caused injuries to the claimant and the second respondent violated the terms and conditions of the policy, he alone is responsible to pay the compensation to the claimant and sought for dismissal of the Claim Petition.

4.The 2nd Respondent herein, remained absent and was set ex-parte for not contesting the Claim Petition.

5.Before the Tribunal, on the side of the Claimant, two witnesses were examined and Ex.P-1 to Ex.P-8 were marked. On the side of the Insurance Company/Appellant herein, two witnesses were examined, and Ex.R-1 to Ex.R-7 were marked.

6.The Tribunal, after taking into consideration of oral and documentary evidences adduced by the parties, came to the conclusion that the rider of the motor-cycle was solely responsible for the accident and awarded a sum of Rs.1,87,000/- with interest @ 7.5% p.a. from the date of numbering of petition, i.e., 03.03.2010, with cost. Further, the Tribunal directed that the Insurance Company/Appellant herein, to pay the compensation and recover the same from the 2nd Respondent herein.

7.I heard Mr.J.Chandran, learned counsel for the Appellant/Insurance Company and Mr.R.Bharath Kumar, learned counsel for the 1st Respondent/Claimant.

8.The Learned Counsel for the Appellant has submitted that the Claimant has not disclosed the correct name of the Driver of the vehicle bearing Registration No. TN 02 E 3404, instead, the Claimant has mentioned in Column 16-A of Claim Petition that the name of the driver as Mr.Manuel Eleazer. The actual name of the driver of the said vehicle was Minor M.Ranjith, son of Mr.Mahendran, aged about 15 years, who was charged by the K-4 Anna Nagar Police Station in Crime No.669/2008 and he did not hold a Driving License and in fact the said Minor was charged under Section-338 of IPC and Section 184 of the Motor Vehicles Act, read with Section-181 of the Motor Vehicles Act and he was produced before the Juvenile Magistrate and he pleaded guilty and paid a fine. The Learned Counsel for the Appellant further submitted that the evidence of PW-2, Dr.Sai Chandran, is not trustworthy and the Tribunal below went wrong in awarding compensation of Rs.1,87,000/- and fastened the liability on the Insurance Company and to pay and recover the compensation amount from the owner of the vehicle, that the Insurance Company is not liable to pay the compensation, as the Tribunal below, has not considered the said vital aspects.

9.Per contra, the Learned Counsel for the 1st Respondent/Claimant has submitted that the Ex.P-1, FIR, clearly states that the manner in which the accident was happened due to the rash and negligent act of the rider of the motor-cycle, bearing Registration No. TN 02 E 3404 and other Exhibits, namely, P-2, Wound Certificate, P-3, Medical Bills, P-4, Treatment Book, P-8, X-Ray, would clearly establish the fact that the claimant had sustained grievous injuries and incurred huge loss and even assuming that the motor-cycle, which was rode by the Minor who does not possess valid driving licence, caused the accident and the name of the rider is wrongly mentioned in

the claim petition as contended by the Learned Counsel for Appellant, the wrong mentioning of name of rider of the vehicle in the claim petition does not materially affect claim and the Award of the Tribunal fixing the liability on the owner of the vehicle and directed the Insurance Company to pay and recover the compensation does not call for any interference from this Court. The Award of the Tribunal below is fair and just and sought for dismissal of the Appeal.

10.The Learned Counsel for the 1st Respondent/Claimant has also brought to the notice of this Court that in the Judgment reported in 2011 (1) TNMAC 641 (SC) and the recent Judgment of the Hon'ble Apex Court reported in 2018 (3) SCC 208 to the effect that even the vehicle driven by a Minor, who does not possess valid authorisation caused the accident due to rash and negligent act, and even the insurer succeeds in establishing its defense that the rider of the vehicle was not qualified to ride and thereby violated the terms and conditions of the policy, the Tribunal or the Court can direct Insurance Company to pay the Award amount and in turn, recover the same from the owner of the motor-cycle.

11.This Court considered the rival submissions made by both the Counsel appearing for the parties, as well as the materials placed before this Court.

12.The main issue raised by the Learned Counsel for the Appellant in this Appeal is that in Column 16-A of the Claim Petition, the Claimant has wrongly mentioned the name of the Driver as 'Manuel Eleazer', instead of 'Minor Ranjith', son of Mr.Mahendran, who was found guilty by the Juvenile Magistrate Court for causing the accident due to negligent riding of motor-cycle and Since the name of the driver-in-charge of the vehicle at the time of the accident was wrongly mentioned in the Claim Petition, the Award of the Tribunal is liable to be interfered with. It is not in dispute that the subject vehicle is insured with the Appellant/Insurance Company by the second respondent herein at the time of accident. As rightly submitted by the Learned Counsel for the 1st Respondent/Claimant that even assuming the correct name of the driver was not mentioned in the Claim Petition and even if the insurance company succeeds in establishing its defense, the insurance company can be directed to pay the award amount to the Claimant and in turn, recover the same from the owner of the vehicle. Since the subject vehicle was insured with the Insurance Company, the liability of the owner of the vehicle can be fastened on the insurance company and the insurance company can be directed to pay the Award

amount to the Claimant and in turn recover the same from the owner of the vehicle. Apart from that, the Motor Vehicles Act, being a beneficial legislation, in the matter of awarding compensation to the accident victims, there cannot be any strict procedures to be followed by the Tribunal. The wrong mentioning of name of owner of the vehicle in the claim petition would not materially affect the claim petition and ultimate effect is one and the same. The reliance placed on the Judgment reported in 2011 (1) TNMAC 641 (SC) and the Judgment reported in 2018 (3) SCC 208 squarely applies to the facts of the present case. In the said decisions, it was held that even if the accident caused by a Minor who was not authorized to drive the vehicle, the Insurance Company was held liable to satisfy the Award and to recover the amount from the owner of the motor-cycle. Therefore, the finding of the Tribunal that the owner of the vehicle is responsible for the accident and the Appellant being the Insurer of the subject vehicle is liable to pay the compensation and recover the same from the owner of the vehicle, does not call for any interference with regard to negligence and liability.

13.The Tribunal awarded the compensation towards various heads which are as follows:

1. Permanent Disability at 50% x Rs.2000	Rs.1,00,000
2. Loss of income at Rs.4500 x 6 months	Rs. 27,000
3. Transportation charges	Rs. 10,000
4. Extra-nourishment	Rs. 15,000
5. Medical expenses	Rs. 10,000
6. Pain and sufferings	Rs. 25,000
TOTAL	Rs. 1,87,000

14.The Tribunal below, on perusal of the pleadings of respective parties, oral and documentary evidences adduced in the case, and also considering the law laid down by the Hon'ble Supreme Court found that the accident had happened only due to the rash and negligent act of the rider of the motor-cycle, bearing Registration No. TN 02 E 3404, which was insured with the Appellant/Insurance Company and the rider of the motor-cycle alone is solely responsible for the same and awarded just compensation. The Tribunal below rightly held that the Second Respondent herein being the owner of the vehicle is liable to pay the compensation and held that the Insurance Company is directed to pay the compensation to the Claimant and is entitled to recover the same from the Second Respondent herein.

15. Therefore, in view of the afore said discussions and findings, no interference is called for with the Award of the Tribunal. In fine, the Award of the Tribunal is confirmed, and the Appeal is dismissed without costs. The Appellant Insurance Company is directed to deposit the entire award amount with interest and costs to the credit of MCOP No.651 of 2010 before the Motor Accidents Claims Tribunal, Chennai. (Special Sub-Judge-I, dealing with MCOP cases) within a period of four weeks from the date of receipt of copy of the judgement, if not already deposited. In the event of such deposit, the Claimant is entitled to withdraw the entire sum without there being a formal application for permission. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Special Subordinate Judge I
The Motor Accident Claims Tribunal
(Special Sub Judge-I) at Chennai District.

Copy to

The Section Officer
VR Section, High Court, Madras 104.

+1 CC to Mr. J. Chandran, Advocate sr 21964.

+1 CC to Mr. R. Bharath Kumar, Advocate sr 21990.

C.M.A.No.65 of 2015

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