IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.535 of 2012
and
M.P.No.1 of 2012

The Branch Manager,
National Insurance Company Limited,
Branch Office, No.333, Bangalaor Road,
Krishnagiri Town & District
.. Appellant /2nd Respondent

Vs.

1.Mumtaj ... 1st Respondent/Petitioner
2.V.Sankaran
(R2 Set exparte before the Tribunal)
..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decreetal order dated 29.06.2011 passed in M.C.O.P.No.1502 of 2007 by the learned Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : M/s.K.Saraswati
for M/s.C.R.Krishanmoorthy

For R1 :Mukund R.Pandiyan

For R2 :Exparte before the Tribunal

J U D G M E N T

This appeal has been filed by the appellant / Insurance Company challenging the liability and quantum. The first respondent herein is the claimant who filed the claim petition in M.C.O.P.No.1502 of 2007 before the learned Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Krishnagiri.

2. The averments made in the claim petition are as follows:
(i) On 30.05.2007 at about 8.30 p.m, while the 1st

respondent/claimant was walking on the extreme left side of the road in Krishnagiri to Hosur NH7 road towards her house, the rider of the Hero Honda Motor Cycle bearing Registration No.TN 24 B 3269 belonging to the 2nd respondent/1st respondent and insured with the appellant/2nd respondent, riding the vehicle in a rash and negligent manner, without observing any rules of the road, without sounding horn, without applying necessary lights and at an uncontrollable speed coming from East towards West, suddenly, hit on the 1st respondent/claimant.

(ii) Due to the impact, the 1st respondent/claimant had sustained grievous injuries. On a complaint, a criminal case was registered against the rider of the said Motor Cycle in Cr.No.449 of 2007 of Krishnagiri Taluk Police.

3. Before the Tribunal, on behalf of the claimant, PW1 and PW2 were examined as witness and Exhibits A1 to A7 were marked. On behalf of the respondents one witness, namely, S.Ravi, was examined and Exhibits B1 and B2 are marked.

4. Before the Tribunal, the Insurance Company has taken a specific plea in the counter statement that the rider of the two wheeler had no valid driving licence at the time of the accident and the same being the breach of policy condition, the Insurance Company is not liable.

5. Based upon the oral evidence of P.W.1, the injured and Exhibit A1 copy of F.I.R, Exhibit A2 Wound Certificate and P.W.2 Doctor was given treatment to the injured and marked as Exhibit A6 Disability Certificate and Exhibit A7 X-ray. On behalf of the Insurance Company, R.W.1 was examined and the policy was marked as Exhibit B1 and the Driving Licence of the driver of the two wheeler at the time of the accident is marked as Exhibit B2 wherein, it is specifically stated that the rider of the two wheeler has only licence to drive L.M.V and not two wheeler.

6. Based upon the oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of two wheeler and also following the decision reported in "2010 (2) TNMAC 542 (DB) has held that there is no valid driving licence amounts to breach of policy condition and hence, the Tribunal has assigned the Insurance Company to pay the amount and to recover the same in the Execution Proceedings.

7. The learned counsel for the Insurance Company would submit that though the finding has been granted in the discussion portion, no specific order has been passed in the

M.C.O.P and consequently, no clause has been incorporated in the decree for pay and recovery.

8. After going through the records and also satisfied that in view of the clear finding that the rider of the two wheeler does not possess valid and effective driving licence on the date of the accident, since as per Exhibit B2 driving licence, the only for L.M.V not for two wheeler, the finding by the Tribunal on the date of the accident, the rider does not possess valid licence and consequently, the Insurance Company can be directed to pay and recover the same in the Execution Proceedings and consequently, there shall be a clause in the decree to that effect.

9. After going through the evidence of P.W.2 Doctor and Exhibit P6 Disability Certificate based upon which the compensation has been granted fixing the disability at 30% and amount of 60% has been granted and for 'loss of income' and loss of 'pain and sufferings' on perusal of the heads of amount and also the quantum awarded therefor, the compensation awarded cannot be termed as excessive and hence, this Court finds that the compensation awarded by the Tribunal is reasonable and the same is hereby confirmed.

10. The Insurance Company shall deposit the amount before the Tribunal and shall recover the same from the owner in the Execution Proceedings.

11. In the result,

(i) this Civil Miscellaneous Appeal is allowed to the limited extent indicated above viz., to pay and recover and the compensation awarded by the Tribunal is hereby confirmed. No costs.

(ii) The Insurance Company if not deposited already, shall deposit the award amount within a period of twelve weeks from the date of receipt of a copy of this order.

(iii) It is open to the Insurance Company to recover the award amount in the Execution Proceedings from the owner of the vehicle as directed above.

(iv) It is open to the claimant to file appropriate petition seeking for withdrawal of the compensation. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Krishnagiri.

+1cc to M/s.C.R.Krishanmoorthy, Advocate sr.25293
+1cc to M/s.Mukund R.Pandiyan, Advocate sr.25885

C.M.A.No.535 of 2012 and
M.P.No.1 of 2012

sj(co)
nr 25/09/2019