IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.821 of 2015

Dakshinamoorthy ... Appellant / Claimant

..Vs..

1. S.Sankaranarayanan
2. V.Kottiswaran
3. The United India Insurance Co. Ltd., Katpadi Road, Vellore, Vellore District ... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.04.2013 made in MCOP No.336 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Vaniyambadi, Vellore District.

For Appellant : Mr. D.Balachandran

For Respondents : Mr. Om Sairam, for R-1, Mr. D.Baskaran, for R-3, R-2 left.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, challenging the liability and the quantum of compensation awarded by the Tribunal in MCOP No.336 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Vaniyambadi, Vellore District.

2. According to the appellant / claimant, on 28.11.2009 at about 06.05 pm, when he was walking on the extreme left side of the road, opposite to Kasiyammal House, Mettur Village, the two-wheeler (Bajaj Discover) bearing Registration No.TN32-R-5519 belonging to the first respondent and Insured with the R-3 / Insurer came in a very rash and negligent manner and dashed against the claimant, due to which the claimant sustained injuries on his right leg and multiple injuries all over the body. Immediately, he was taken to the Government Hospital,

Tirupattur and thereafter referred to the Government Medical College and Hospital, Vellore, and he took treatment as inpatient till 07.04.2010. Thereafter, the claimant was referred and taken treatment in the Government General Hospital, Chennai. Stating that the accident had happened due to the rash and negligent riding of the rider of the two-wheeler, the claimant has filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as total compensation.

3. The said claim petition by the claimant / appellant was resisted by the Insurer / R-3 herein on the ground that the rider of the motorcycle / R-2 herein was not having valid driving licence at the time of accident and hence there was breach of policy conditions and hence the R-3 as Insurer is not liable to compensate the claimant; that the claimant is guilty of contributory negligence; and that the amount claimed by the claimant is excessive.

4. The Tribunal, after contest, after framing issues, after analysing evidence and documents adduced on both sides, has rendered the following findings:-

i) The owner of the two-wheeler was R-1, the rider of the two-wheeler was R-2, who did not possess valid driving licence at the time of accident and R-3 was the Insurer. The Insurance Policy of the two-wheeler was in force with the R-3/Insurer but R-3 is not liable to compensate the claimant and only R-1 / owner is liable to compensate the claimant; since the rider of the two-wheeler was not possessing the valid Driving Licence to drive the vehicle at the relevant point of time.

ii) The Tribunal, by taking the monthly income of the claimant at Rs.1,350/- and applying the multiplier of 11, has arrived at the loss of income at Rs.1,78,200/-. The Tribunal, placing reliance on the evidence of the Doctor, who has assessed the disability of the claimant at 30%, has awarded sums of Rs.10,000/- each towards permanent disability and pain and suffering and Rs.2,000/- towards extra nourishment and Rs.19,918/- and Rs.100/- towards car rent and ultimately awarded the total compensation at Rs.2,20,200/-, payable with interest at the rate of 7% per annum from the date of petition till the date of deposit.

iii) In other words, the finding of the Tribunal was that the accident took place on account of the rash and negligent driving on the part of the rider of the two-wheeler and arrived at the compensation of Rs.2,20,200/- payable by (R-1) the owner of the two-wheeler, exonerating the Insurer.

5. The compensation awarded and the break up details are as under:-

Loss of earning (Rs.1,350x12x11)	-	Rs.1,78,200/-
Pain and suffering	-	Rs. 10,000/-
Permanent disability	-	Rs. 10,000/-
Extra nourishment	-	Rs. 2,000/-
Car Rent as per Ex.P-9	-	Rs. 19,918/-
Car Rent as per Ex.P-8	-	Rs. 100/-
Total	-	Rs. 2,20,218/-
(Rounded off)		Rs. 2,20,200/-

6. Branding the award as disproportionate and lesser, the claimant, as appellant, has preferred this Appeal.

7. It is the contention of the learned counsel for the appellant / claimant that the Tribunal has erred in awarding lesser compensation under the heads, pain and suffering, extra nourishment and permanent disability; that though the Doctor has assessed the disability at 45%, the Tribunal, without any reason, has taken the same only at 30%, which is not justified. He further submitted that the Motor Vehicles Act being beneficial legislation the Tribunal ought to have directed the Insurer to pay compensation to the claimant at the first instance and thereafter recover the same from the owner or rider of the two-wheeler; and in any event, the quantum arrived at by the Tribunal is too low, which needs significant increase.

8. The learned counsel for the first respondent / owner of the two-wheeler has submitted that the Tribunal has erred in fastening the liability on the owner of the two-wheeler, when the Insurance Policy was in force; that the Tribunal has not appreciated the documents in a proper manner and had the Tribunal been appreciated the evidence and documents adduced before it properly, it would not have observed that only the owner is liable to pay the compensation.

9. The learned counsel for the R-3/Insurer submitted that the Tribunal, after analysing the evidence and documents adduced by both sides, has fastened the liability on the Insurer, which does not require any interference by this Court; that the materials on record would only establish the fact that the rider of the two-wheeler does not possess the valid driving licence at the time of accident and hence the Tribunal has rightly fastened

the liability on owner of the two-wheeler; that the quantum arrived at by the Tribunal was based on documents produced and hence, interference of the same is uncalled for.

10. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record, meticulously.

11. It is borne out from the records that the rider of the two-wheeler (R-2) failed to produce the Driving Licence. The charge sheet was filed as against the rider of the two-wheeler (accused) for not holding valid driving licence. That apart, the rider of the two-wheeler / second respondent remained exparte before the Tribunal and he was not examined as one of the witnesses to disprove the claim made by the claimant. R.W.1, who is an Assistant from the Regional Transport Office, Vaniyambadi, in his evidence, has stated that no driving licence was issued in the name of the R-2 from their office. It is not known whether the second respondent has obtained driving licence from any other RTO, apart from RTO, Vaniyambadi. Also the R-3/Insurer has relied upon only the letter from RTO, Vaniyambadi, which letter was returned to them as unserved. Hence based upon the evidence of R.W.1 and R.W.2 alone the Tribunal ought not to have drawn adverse inference and concluded that the R-2/driver of the two-wheeler has no driving licence.

12. Apart from the above, in a number of decisions the Apex Court and this Court have repeatedly held that in the absence of Driving Licence of the rider/driver of the vehicle, the Insurance Company has to pay the compensation amount insofar as the third parties are involved in any accident and then they have to make recovery from the owner of the vehicle. Hence, the exoneration of the R-3/Insurer by the Tribunal is liable to be set-aside. In such view of the matter, this Court is of the view that the Tribunal should have ordered for pay and recovery and the Insurance Company ought not to have been exonerated from the liability on the ground that the rider did not possess valid driving licence at the time of accident. Hence the finding of the Tribunal on this aspect is set-aside.

13. As far as the quantum of compensation arrived at by the Tribunal is concerned, the Tribunal, placing reliance on the decision of the Apex Court reported in 2011 ACJ 1 (Rajkumar v. Ajay kumar and another) and also other documents, has taken the monthly income of the claimant at Rs.4,500/- and arrived at the sum of Rs.1,350/- towards future loss of income for 30% disability, applied the multiplier of 11 and awarded a sum of Rs.1,78,200/- towards loss of income. The Tribunal has also awarded a sum of Rs.10,000/- each towards pain and suffering and permanent disability, Rs.2,000/- towards extra nourishment and

sums of Rs.19,918/- and Rs.100/- towards Car Rent. The amounts awarded by the Tribunal under various heads, in the opinion of this Court, are sustainable and based on weightage of evidence, probabilities of case and just.

14. In the result, the Civil Miscellaneous Appeal filed by the claimant, is partly-allowed. The R-3 / Insurer is directed to deposit the entire compensation as awarded by the Claims Tribunal, along with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made by the Insurance Company, the Tribunal shall transfer the entire amount to the Savings Bank Account of the claimant / appellant herein through RTGS, within one week thereafter. Thereafter, the Insurance Company shall recover the same from the Owner of the vehicle in the manner known to law. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal, Subordinate Court,
Vaniyambadi,
Vellore District.

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

+1cc to Mr.D.Bhaskaran, Advocate Sr.95765
+1cc to M/s.OM.Sai Ram, Advocate Sr.95500

C.M.A.No.821 of 2015

rsv[co]
srg 14/09/2020