

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3480 of 2013

T.Gobi
S/o.Thangavel

... Appellant/Respondent

- Vs -

1. Sunil Kumar
S/o.Ramanarasingh

2. Ajaikumar
S/o.Udayanarayan Singh
(Notice to R1 and R2 may be dispensed with
since they were set ex-parte before the Tribunal)

3. Bajaj Alliance General Insurance Co. Ltd.,
D.No.11, Peoples Park Street, 3rd Floor,
Government Arts College Road,
Coimbatore-641 018. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order dated 26.07.2012 made in M.C.O.P.No.38 of 2009 on the file of the Motor Accident Claims Tribunal (V Additional District Court, Bhavani, Erode District.

For Appellant : Mr.C.Kulanthaivel

For Respondents: R1 & R2 - Exparte
Mrs.Rathnathara-3

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the order dated 26.07.2012 made in MCO.P.No.38 of 2009 by the Motor Accident Claims Tribunal (V Additional District Court), Bhavani, Erode District by raising the following grounds:-

1. The Tribunal ought not to have exonerated the insurance company from paying the compensation to the claimant and further erred in directing the claimant to recover the compensation only from the first and second respondents,

who are the driver and owner of the offending vehicle.

2. The Tribunal failed to consider the judgment of the another Tribunal in respect of the same accident for the injured pillion rider of the motor cycle, where it was held that the insurer was directed to pay the compensation and then recover from the owner of the offending vehicle vide judgment dated 02.07.2012 made in MCOP.No.124 of 2008 on the file of Motor Accident Claims Tribunal-cum-Subordinate Court, Bhavani.
3. As per Exs.D5 & D6 the driver of the offending vehicle has license but the same was forged and fake one.
4. As per Ex.A9, the claimant sustained grievous injuries on right leg foot and right leg knee and tissues on the right knee has got damaged and he had taken inpatient treatment for 7 days.

2. The case of the appellant is that on 07.01.2008 around 12.00.a.m when the claimant was riding a Hero Honda Motor Cycle bearing Registration No.TN-48-F-7309 from Erode to Sankari main road near unjakarai towards south to north by following the traffic rules, on the left side corner of the road, at that time, a container lorry bearing Registration No.HR-38-L-2536, driven by the first respondent in a rash and negligent manner, without following rules and regulations towards west to east, hit the appellant. Due to the said accident, the appellant sustained grievous and simple injuries all over the body. He was admitted in Lotus Hospital at Erode and the appellant voluntarily discharged from the Hospital and admitted to L.K.M.Hospital at Erode as inpatient. Due to the said accident, the appellant sustained grievous injuries on his right knee and right foot. The appellant was admitted as inpatient for one month. At the time of accident, the appellant was 20 years old and was hale and healthy and earning a sum of Rs.6,000/- per month by selling Milk at Pallipalayam Society Sizing Milk. He is the only bread winner of his family. Due to the said accident, the appellant is unable to move his right leg and not able to walk, sit, stand and unable to lift any weight. As he was working in sizing mill, he claimed a sum of Rs.2,00,000/- as compensation from the third respondent-Bajaj Alliance Insurance Company.

3. A counter statement was filed by the third respondent denying all the averments and stated that they had issued policy bearing No.CW-06/0/01941 subject to the terms, conditions, exceptions and limitations thereof and the confirmation of the compliance of 64 VB of the Insurance Act, 1938. Further, the driver of the vehicle had no valid and effective license at the time of accident and driven the vehicle in a rash and negligent manner. However, the appellant has not sustained any grievous injury. As the appellant voluntarily discharged from the hospital and

admitted in another hospital, it is false to state that he was taking treatment for one month. The appellant's work is a physical work and it is false to state that it is a total permanent disablement and claiming a sum of Rs.2,00,000/- for compensation is highly exorbitant. It is further submitted that the claimant drove his motorcycle from South to North direction in a rash and negligent manner with high speed and without following any traffic rules and not able to control his vehicle without seeing the vehicle which was coming from west to east direction, hit the vehicle. Hence, it is only the mistake of the appellant herein. The driver of the lorry bearing registration No.HR-38-L-2536 was not having valid and effective driving license at the time of accident and hence, they prayed for dismissal.

4. On the side of the appellant/claimant, Exs.P1 to P9 were marked and the claimant was examined. On the side of the respondent one S.Meganathan was examined and Exs.R1 to R10 were marked. The learned counsel for the appellant submitted that the pillion rider had filed claim petition before the Subordinate Court, Bhavani and the same was allowed on 02.07.2012 and the Subordinate Court, Bhavani had directed the respondents to pay the compensation to the injured and recover the same from the original owner of the offending vehicle and they also fixed liability on the owner of the vehicle. The driver and the vehicle owner have not claimed the said notices and have returned the cover unclaimed. If the driver had any valid licence, he would have produced it before the Court. The return of cover unclaimed means that the driver of the offending vehicle did not have valid driving licence at the time of accident. The driver of the offending vehicle by driving it without valid driving license, had committed breach of the policy conditions and decided the issue by directing the Insurer to pay the compensation and recover it from the owner of the vehicle. The same was produced before the learned District Judge, Bhavani on 26.07.2012. The Court below has not considered the same and immediately decided the issue by fixing a sum of Rs.35,405/- as compensation and fixed liability on the owner of the vehicle arising from the very same accident.

5. The learned counsel for the Insurance Company submitted that already the matter has been decided and the amount has been awarded by fixing the liability on the owner of the vehicle.

6. When two claim petitions have been filed from the same accident, one case has been allowed and the same has been awarded to an extent of Rs.2,34,000/- and another case in MCOP.No.38 of 2009, which was listed before the District Court, Bhavani and the learned District Judge has not considered the said award of the Subordinate Judge and has

passed an order, this Court is of the view that the same can be looked into while deciding the case and awarding compensation. This Court is inclined to remand back to the Court by letting in evidence by the appellant regarding the injuries sustained and the nature of treatment undergone by him and any other evidences to be adduced by the appellant. There is a controversy arising due to the fact that the appellant has submitted that no opportunity was given to him to examine the Doctor, which has been denied by the third respondent-Insurance Company stating that there was no such ground raised before the Court below.

7. Hence, in order to give an opportunity to the parties and to decide the case, the matter shall be remanded back to the learned V Additional District Judge, Bhavani for adducing fresh evidences and the same shall be considered afresh by the learned V Additional District Judge and dispose of the same on or before 31.03.2020. The Registry is directed to transmit the material papers received in this case to the learned V Additional District Judge Bhavani, without any delay.

8. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The V Additional District Judge,
Motor Accident Claims Tribunal,
Bhavani, Erode District.

Copy to:

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

+1cc to Mrs.Rathnathara, Advocate SR.101885

+1cc to Mr.C.Kulanthaivel, Advocate SR.101604

C.M.A.No.3480 of 2013

BS(CO)

CB(05/03/2020)