IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY
C.M.A.No.583 of 2013
and
M.P.No.1 of 2013

Royal Sundaram Alliance Insurance
Company Limited,
8/H-1, Mangalam Buildings,
4 Road, Salem 9.
... Appellant/ Respondent

..Vs..

1.P.Sakthivel .. Respondent1/ Petitioner

2.S.Vijay .. Respondent 2/ Respondent 1

3.S.Mohan
... Respondent3/ Respondent2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.03.2012 in M.C.O.P.No.140 of 2011 on the file of the Motor Accidents Claims Tribunal, Court of Chief Judicial Magistrate, Erode.

For Appellant : Mr.S.Manohar
For Respondents: R1 & R2 - Dismissed
vide Court order
dated 30.09.2015.
: R3- No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 29.03.2012 passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Erode in M.C.O.P.No.140 of 2011.

2. On 13.01.2010, at 19.45 hours, when the claimant/first respondent was riding his moped at a slow speed along the left side of Erode to Tiruchengode road, a Maruti van bearing Registration No. TN 36 K 0661, belonging to the second respondent therein and insured with the third respondent therein, being driven by the first respondent came from the opposite direction at a very high speed, in a rash and negligent manner and at Rajagoundan Palayam village, when he

noticed a pothole in the road, he swerved the van to the wrong lane and rammed into the moped ridden by the claimant, and thus, caused the accident. In the said accident, the claimant sustained several injuries. Immediately, he was taken to Government Hospital, Tiruchengode and thereafter, for further treatment shifted to Alagiri Hospital in Pallipalayam, wherein, surgery was performed and plates and screws were implanted. In addition to the same, one more surgery was also performed to replace the hip bone and he has been advised by the Doctor to take physiotherapy regularly. The claimant was 40 years old at the time of the accident, and was doing construction work and earning a sum of Rs.12,000/- per month. After the disablement, he was unable to do any work. Hence, the claimant made a claim for a sum of Rs.4,00,000/- as compensation.

3. The second and third respondents herein remained absent before the Claims Tribunal, and therefore, they were set ex-parte.

4. The appellant/Insurance Company, Salem contested the claim petition by filing a counter statement, denying their liability on the ground that the driver of the Maruthi Van was not having valid driving licence and hence, they are not liable to pay compensation. Further, they also disputed the age, occupation, income of the claimant and the nature of injuries sustained by him. Furthermore, they contended that the claimant rode the moped in a careless manner, and therefore, there is contributory negligence on the part of the rider of the moped, and hence, the Insurer of the said Moped has to be added as necessary party and claim petition is liable to be dismissed for non-joinder of necessary party. Thus, the Insurance Company prayed for dismissal of the claim petition on the aforesaid grounds.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.K.Periyasamy as P.W.2 and marked 16 documents as Exs.P.1 to P.16. On the side of the Insurance Company, 2 witnesses were examined and 6 documents were marked as Ex.R.1 to Ex.R.6

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident occurred due to the rash and negligent act of the driver of the Maruti Van, belonging to the second respondent, and the third respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.2,21,200/- with interest at the rate of 9% per annum from the date of Petition till payment as compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.1,51,200/-
2.	Pain and agony	Rs. 10,000/-
3.	Medical bills	Rs. 60,000/-
	Total	Rs.2, 21,200/-

7. The learned counsel appearing for the appellant/Insurance Company would submit that Insurance Company has filed this Appeal challenging the liability fastened on them and also questioning the quantum of compensation awarded by the Tribunal. The learned counsel submitted that the driver of Maruthi van, bearing Registration No. TN 36 K 066, had a licence only to drive 'Light Motor Vehicles' and that he had no endorsement or badge authorising him to drive any transport vehicles, and hence, they are not liable to pay compensation. The learned counsel further submitted that, in view of the settled legal principle of law by the Hon'ble Apex Court, the Tribunal should have awarded interest only at the rate of 7.5% per annum, whereas, it has awarded 9% interest.

8. The issue raised by the Insurance Company in this Appeal is no longer res integra, as the same has been dealt with by the Hon'ble Apex Court in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), wherein, it has been clearly held that, once a licence is issued to drive 'Light Motor Vehicle', it would also amounts to giving specific authorization to drive a transport vehicle or omnibus, the goods vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, should not exceed 7500 kg. In the present case, the driver of the offending vehicle, (Maruthi Van), which is below 7500 kg weight was having valid driving licence and he was not in possession of badge.

9. Thus, in the light of the above decision of the Hon'ble Apex Court, in Mukund Dewangan's case (supra) the plea raised by the Insurance Company in respect of the liability stands negatived and it is held that the appellant/Insurance Company is liable to pay compensation to the claimant.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal and the findings of the Tribunal with regard to the liability are confirmed. (iii) The rate of interest fixed by the Tribunal at the rate of 9% is reduced to 7.5% per annum.

(iii) The appellant/Royal Sundaram Alliance Insurance Company Limited is directed to deposit the entire amount awarded by this Tribunal along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate Court,
Erode.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.S.Manohar , Advocate SR.No. 28671

C.M.A.No.583 of 2013

A.SK(12/02/2020)