

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.654 of 2013

K.Rajagopal

... Appellant/Petitioner

Vs.

1.S.Ramesh

2.United India Insurance Company Limited,
Divisional Office,
Kandasamy Street, Ranipet,
Vellore District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree dated 22.04.2009 and made in M.A.C.T.O.P.No.119 of 2008 on the file of the Motor Accident Claims Tribunal, Addl. District and Sessions Judge, Fast Track Court No.2, Ranipet.

For Appellant : Mr.C.Prabakaran

For Respondents : R1 - Not ready in notice

: Mr.C.P.Krishnamoorthy for R2

JUDGMENT

The Appellant herein is the claimant has aggrieved by the Judgment and decree dated 22.04.2009 and rendered in M.A.C.T.O.P.No.119 of 2008 by the file Motor Accident Claims Tribunal, Addl. District and Sessions Judge, Fast Track Court No.2, Ranipet by raising various grounds.

2.The case of the appellant is that on 05.04.2006 at about 05.30 P.M. the appellant was going on a cycle on Rudayarpalayam to Narasingapuram road, near Elumalai's House. At that time the Motorcycle bearing Registration No.TN-23 AZ-8991 owned by the first respondent and driven by its driver in a rash and negligent manner hit the appellant, as a result of which the appellant has sustained grievous injuries including multiple fracture. The appellant was taken to the Government Hospital, Sholinghur for treatment and took further treatment at G.H. Chennai and Private Clinic. The accident was caused

by rash and negligent driving by the driver of the motorcycle. The first respondent is the owner of the motorcycle and the second respondent is the insurer of the said motorcycle.

3. Heard learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

4. The learned counsel for the Appellant submitted that the accident was occurred only due to the negligent act of the insured vehicle and the second respondent has not taken steps to examine the witness of RTO whether driving license of the rider of the motorcycle was available or not. The letter given by the RTO stated that the rider of the two wheeler was having LMV license only and not having two wheeler license at the time of the accident. Hence there is violation of policy condition which ought to have been proved by examining the person who was owning the driving license. The Court below ought to have fixed the liability to both the respondents jointly and severally instead the first respondent was a driver and the second respondent was exonerated from the said liability and has not directed the second respondent to pay the compensation to the Appellant and recover the same from the first respondent as the same has to be ensured. The pay and recover principle has to be followed as per the Hon'ble Apex Court judgment and the Court below has not considered the same and has also awarded a meagre amount. The Court below ought to have awarded compensation Rs.60,000/- towards permanent disability at the rate 30% assessed by the Doctor, PW2 by calculating Rs.2,000/- per disability but the Court below has awarded compensation of Rs.30,000/- towards permanent disability is very low and he prayed for enhancing the compensation.

5. The Court below has fixed the permanent disability at 30% and Rs.1,000/- per percentage, in the absence of any discharge summary to prove that he has sustained 30% permanent disability, the Court below ought to have reduced the same to 20% and accordingly, per percentage Rs.2,000/-, (20% x Rs.2,000/-) Rs.40,000/- is awarded. Apart from that there is no interference with the judgment, pay and recover has to be allowed as the same has been ensured with the insurance company but the rider of the motorcycle did not have a valid license and only he had a LMV license and the violation of policy condition cannot absolve the owner from paying the said amount as the same has been insured with the second respondent.

6. This Court is of the considered view that the second respondent shall pay the compensation to the claimant and recover the same from the first respondent, who is the owner of the vehicle.

7.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent is directed to deposit Rs.77,155/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of M.A.C.T.O.P.No.119 of 2008, on the file of the Motor Accident Claims Tribunal, Addl. District and Sessions Judge, Fast Track Court No.2, Ranipet within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the said sum by filing an appropriate application.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Addl. District and Sessions Judge,
Fast Track Court No.2, Ranipet.

CC: The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate SR.103451

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.103450

C.M.A.No.654 of 2013

GJ(CO)
CB(10/06/2020)

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