

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2657 of 2019

Karthick

... Appellant/Claimant

Vs.

1. R. Balakrishnasamy

2.R. Arumugan

3. The Divisional Manager,

The United India Insurance Company Ltd.,

144-B, Kandasamy Complex,

Kalpana Road,

Udumalpet.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2019 made in M.C.O.P.No.76 of 2016 on the file of Motor Accident Claims Tribunal, (Sub-Court), Udumalpet.

For Appellant : Mr.S. Gunalan

For Respondents : Mr.S. Arunkumar for R3

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 01.02.2019 made in M.C.O.P.No.76 of 2016 on the file of Motor Accident Claims Tribunal, (Sub-Court), Udumalpet.

2.The brief facts is as follows:

On 08.01.2016 at about 07.15 hours, the appellant/petitioner who is the pillion rider of the two wheeler bearing Regn.No.TN 41 W 2894 was coming from Udumalpet to Dharapuram Main road from East to West direction, driven by the first respondent in a rash and negligent manner, with great speed and also without horn and control, suddenly turned the two wheeler and hit against a two wheeler bearing Regn.No.TN 41 X 3430 and caused the accident, due to which, the appellant/petitioner sustained grievous injuries; the second

respondent is the owner of the said vehicle and third respondent is the insurer of the vehicle bearing Regn.No.TN 41 W 2894. The appellant/claimant is the injured who filed M.C.O.P.No.76 of 2016 on the file of Motor Accident Claims Tribunal, (Sub-Court), Udumalpet. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injury sustained by him in the accident that took place on 08.01.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the first respondent and directed both the respondents 1 and 2 to pay a sum of Rs.5,78,752/- as compensation to the appellant jointly and severally and dismissed the claim petition as against the third respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal failed to note that the first respondent was the owner of the vehicle and he had taken an Insurance Policy from the third respondent and the same was very much in force upto 22.07.2016. The accident had taken place on 08.01.2016. Hence, the third respondent is also liable to pay compensation to the appellant. He further contends that on the date of accident, the vehicle was insured with the third respondent and admittedly the claimant is only a pillion rider. Therefore, the Tribunal ought to have held that the respondents are jointly and severally liable to pay the award amount. The award of the Tribunal fixing liability on the respondents 1 and 2 alone is not sustainable in law. The Tribunal ought to have considered the age, duration of the treatment and the injuries sustained by the appellant while awarding compensation. He further contends that the Tribunal has failed to note that this Court in numerous judgment directing the Insurance Company to pay compensation to the claimant and recover from the owner for his breach of the policy condition. Further, the appellant also aggrieved against the award made by the Tribunal when the injured person sustained grievous injuries in the head as well as in the face which has been very much illicited in Ex.P5 certificate and he was also treated for a long time. Hence the appellant is very much aggrieved that the injured person is a student and the nature of injuries sustained by him and the treatment period is from 08.01.2016 to 03.02.2016 and he was treated as in-patient in KMH Hospital.

4.The learned counsel appearing for the respondents contended that the owner of the vehicle has not informed the details of the accident along with accident and policy particulars. They further contend that the appellant is the pillion rider of the insured vehicle and he sustained injuries

but his name was not included in injured list as well as charge sheet. They further contends that the appellant has to prove that after the accident, he was taken to the Government Hospital, Udumalpet and then he was referred to CMC Hospital, Coimbatore and for better treatment he was admitted as an inpatient at KMCH, Coimbatore for a period of 27 days and the appellant is not entitled to claim any interest on pecuniary damages as per the observations of the judgment of Hon'ble Apex Court. The appellant has to prove with the documentary evidence that the doctor advised him to take bed rest for another six months. The Tribunal after considering both oral and documentary evidence has awarded a sum of Rs.5,78,752/- which is not meagre and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents and perused all the materials available on the records.

6. The appellant was examined and marked Exs.P1 to P13 and the respondent was examined and marked the document as Ex.R1.

7. On perusal, it is seen that the claimant/appellant in this claim application is a pillion rider and he cannot be treated as a third party and the Tribunal had elaborately discussed all these aspects by following the policy as well as the claim made by the claimant and has given a finding that the Insurance Company is not liable to pay the compensation since the pillion rider cannot be considered as a third party.

8. The learned counsel for the respondents also argued that in view of the said findings, the appellant cannot be considered as a third party. In view of the documents as well as liability and also the status of the claimant, the findings of the Tribunal is based very much on facts and documents and hence, the appeal is liable to be dismissed.

9. In these circumstances, it is pertinent to refer the Judgment of the Hon'ble Supreme Court reported in 2008(6) Supreme 329 in the case of Oriental Insurance Co, Ltd., Vs Sudhakaran K.V. & Others. The relevant portion is extracted below.

19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147

of the Act cannot be extended to an injury or death

of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

In the present case also, the injured was travelled as a pillion rider and suffered injuries in that said accident, he cannot be treated as third party as per policy and there is no sufficient proof to show that the requisite amount premium is paid for covering the risk. Therefore, it is clear that as per the liability only policy (Act policy), the Insurance Company is not liable to pay any compensation to the pillion rider, who cannot be considered as Third Party.

10. On perusal of the evidences and documents, it is seen that the Tribunal has awarded a reasonable sum on all the heads stated above. Therefore, the said contention raised by the appellatant is without merits. The sum awarded by the Tribunal is not excessive and does not require any interference by this Court. Hence the findings of the Tribunal in respect of liability of the respondents 1 and 2 is confirmed.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,78,752/- awarded by the Tribunal as compensation to the appellatant/claimant, along with interest and costs is confirmed. Both the respondents 1 as well as 2 are directed to deposit the award amount with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.76 of 2016. On such deposit, the appellatant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Sub Judge, Motor Accident Claims Tribunal,
(Sub-Court), Udumalpet.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 69329

+1cc to Mr.S.Gunalan , Advocate SR.No. 69035

C.M.A.No.2657 of 2019

A.SK(02/03/2020)