IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2491 of 2018
and CMP.No.19022 of 2018

Bharati Axa General Insurance
Company Ltd., Chennai-2. ...Appellant/2nd Respondent

Vs.

1.Mary Victor ... 1st respondent/Claimant

2.P.Prakash ...2nd Respondent/1st respondent

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 07.9.2017 made in MCOP.No.6796 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub-Judge No.1 to deal with MCOP Cases cum Small Causes Court), Chennai.

For Appellant : Ms.K.Poomalai

For Respondent-1 : Mr.G.Purushothaman
R2 : No Appearance

JUDGMENT

The Insurer is on Appeal before this Court as against the award passed by the Motor Accidents Claims Tribunal, (Special Sub-Court to deal with MCOP Cases cum Small Causes Court), Chennai (hereinafter called the Tribunal) in a road accident causing grievous injuries to the first respondent herein / claimant.

2. The accident took place on 18.8.2013 around 8.30 PM near Bhavani Amman Koil Opposite, TH Road, Tondiarpet, Chennai-81. On the date of accident, the first respondent herein / claimant was walking from North to South direction on the side of the road and the motor cycle bearing Regn.No.TN-03-J-4429 belonging to the second respondent herein and insured with the appellant herein, coming from South to North direction, driven by one Mr.Muthu in a rash and negligent manner, hit against the first respondent herein / claimant. Due to the impact, the claimant sustained grievous injuries all over the body.

3. The first respondent herein / claimant had taken treatment as an inpatient from 19.8.2013 to 23.8.2013 in the Star Bone and Joint Centre, Chennai-5. At the time of accident, the first respondent herein / claimant was aged 67 years and was a vegetable vendor earning a sum of Rs.400/- per day. Due to the injuries sustained in the accident, the first respondent herein / claimant is not able to work and walk. Only because of the rash and negligent driving by the rider of the motorcycle, the accident occurred. The appellant herein is the Insurer of the vehicle. The second respondent herein is the owner of the vehicle. Hence, the first respondent herein / claimant filed a petition before the Tribunal claiming a compensation of Rs.6 lakhs together with interest and costs.

4. Before the Tribunal, the second respondent herein, who is the owner of the motor cycle involved in the accident, was called absent and hence set exparte. The appellant herein / Insurer of the vehicle resisted the claim petition by filing a counter, in which, they stated that the rider of the motor cycle namely one Mr.Muthu did not have a valid driving licence on the date of accident and that he consumed alcohol at that time and that the second respondent herein / owner of the vehicle had not produced the insurance policy details, date and time of accident or complied with the statutory demand; that the first respondent herein / claimant had to prove the age, avocation income, injuries sustained and the disability with proper documentary evidence. It was further stated by the appellant herein / Insurer in the counter that if it is found that the appellant herein is the insurer of the motor cycle involved in the accident, then they may be permitted to take all the defences against the owner of the vehicle and that the amount claimed in the petition is exorbitant and excessive. Ultimately, the appellant herein / insurer sought to dismiss the claim petition with costs.

5. Before the Tribunal, the first respondent herein - claimant examined herself as PW1 apart from examining one Dr.K.J.Mathiazhagan as PW2 and marked Ex.P1 to Ex.P.12 namely a copy of the First Information Report, a copy of the Rough Sketch, a copy of the Charge Sheet, a copy of the Wound Certificate, Discharge Summary, X ray (2 Nos.), Photos, Medical Bills, Transportation Bills, Disability Certificate and X ray. The appellant / insurer examined two witnesses as RW1, Junior Assistant, Regional Transport Office (North-East) and RW2, Assistant Manager of the appellant / Insurer and marked Ex.R1 to Ex.R6 namely the letter issued by the Regional Transport Officer, a copy of the insurance policy, notices sent to both the rider and the owner of the vehicle involved and the respective tracking lists.

6. The Tribunal framed three points for consideration namely

(i) whether the accident occurred due to rash and negligent act of the rider of the motor cycle ?

(ii) who is liable to pay compensation ? And

(iii) whether the first respondent herein - claimant is entitled to compensation and if so, what is the quantum ?

7. The Tribunal, after considering Ex.P1 to Ex.P3 and the evidence of PW1, found that the accident took place due to the rash and negligent driving of the rider of the motor cycle. The Tribunal also found that the owner of the vehicle remained ex-parte and that the appellant herein / insurer had not adduced any material contrary to the cross examination of PW1, with regard to the manner of accident.

8. The Tribunal has also examined the evidence of RW1 and RW2, who spoke with regard to non issuance of driving licence to the rider of the vehicle involved. The Tribunal found that even after the receipt of the notices issued by the appellant / insurer, neither the owner nor the rider of the vehicle involved had not come forward to produce the driving licence and that the owner of the vehicle allowed a person without a valid driving licence to ride the motor cycle on the date of accident. The Tribunal also found that the appellant / insurer failed to prove through documentary evidence that the rider of the vehicle consumed alcohol at the time of accident. Finally, the Tribunal concluded that the accident had occurred only due to the rash and negligent driving of the rider of the motor cycle involved. The Tribunal has also concluded after considering Ex.R2 that the appellant / insurer is liable to pay the compensation amount to the injured / claimant with liberty to recover the same from the owner of the vehicle namely the second respondent herein.

9. With regard to the quantum, the Tribunal perused the injuries sustained by the first respondent herein / claimant by examining the Wound Certificate marked as Ex.P4, the Discharge Summary marked as Ex.P5, X rays marked as Ex.P6 and Ex.P7 and the photographs marked as Ex.P8 and the evidence of PW2 / the Doctor to assess the disability. The Tribunal has found that PW2 was not the doctor, who gave treatment to the first respondent herein / claimant. The Tribunal has also found that the first respondent herein / claimant suffered partial and permanent disability and fixed the disability at 20% and arrived at the compensation at Rs.60,000/- towards disability.

10. The Tribunal has fixed the monthly income of the first respondent / claimant at Rs.10,000/- and awarded a sum of Rs.30,000/- towards loss of earnings after considering the nature of injury. The Tribunal has further awarded a sum of

Rs.50,000/- towards pain and suffering after considering the fact that the first respondent herein / claimant was taking treatment as an inpatient from 19.8.2013 to 23.8.2013, Rs.1,000/- towards transportation charges, Rs.24,630/- towards medical expenses after taking into consideration the medical bills, Rs.15,000/- towards extra nourishment, Rs.1,500/- towards attender charges and another sum of Rs.50,000/- towards loss of future prospects. In total, the Tribunal awarded a sum of Rs.2,32,130/- rounded off to Rs.2,32,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization to be payable by the insurer at the first instance with liberty to recover from the owner of the vehicle. The Tribunal further directed the appellant / insurer to deposit the entire compensation amount within two months therefrom and further directed the amount to be kept in fixed deposit in any nationalized bank for a period of three years. Aggrieved by such award, the Insurer is before this Court.

11. The learned counsel for the appellant / insurer contended that the Tribunal has erred in awarding excessive and huge compensation to the respondent herein / claimant for the injuries sustained and that the Tribunal has erred in coming to the conclusion that the accident was due to the alleged rash and negligent driving by the rider of the motor cycle. According to the learned counsel, the first respondent herein / claimant is also responsible for the accident. He further contended that the Tribunal ought not to have awarded the compensation, which is against the pleadings, facts and evidence and also against well laid principles of law.

12. Per contra, the learned counsel for the first respondent herein / claimant has submitted that the Tribunal has passed a well considered award and sought to sustain the same.

13. Heard both. This Court has carefully considered the contentions made by the counsel on either side.

14. The main contention raised by the appellant / Insurer before the Tribunal is that the rider of the vehicle was not having the valid licence at the time of accident and that he consumed alcohol at the time of accident. It was also contended that the first respondent herein / claimant was also responsible for the accident. It is seen that the owner of the vehicle namely the second respondent herein remained ex parte. Even after receipt of the notices sent by the insurer, neither the owner of the vehicle nor the rider of the vehicle, who caused the accident, came forward to produce the driving licence. Further, the insurer did not produce any evidence to prove that the rider of the vehicle consumed alcohol at the time of accident. Rather, the Tribunal has considered the evidence and has arrived at the just compensation. The reasoning given by the Tribunal is cogent

and convincing. Also no new fact or material is forthcoming on the side of the appellant herein to come to a different conclusion than the one arrived at by the Tribunal. Viewed from any angle, the findings rendered by the Tribunal, on negligence as well as on quantum, are valid and justified.

15. In the light of the above, the above Civil Miscellaneous Appeal is dismissed by confirming the award passed by the Tribunal. The appellant / insurer is directed to deposit the entire compensation amount as awarded by the Tribunal, together with interest and costs, as ordered by the Tribunal, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the said amount to the Savings Bank Account of the first respondent herein / claimant through RTGS within one week thereafter. No costs. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

srk / av

To

The Motor Accidents Claims Tribunal
(Special Sub-Judge No.1 to deal with MCOP Cases cum
Small Causes Court), Chennai.

+1cc to Mr.K.Poomalai, Advocate, S.R.No. 90849
+2cc to Mr.G.Purushothaman, Advocate, S.R.No. 90108

CMA.No.2491 of 2018 &
CMP.No.19022 of 2018

TM(CO)
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