IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1053 of 2013
and
M.P.No.1 of 2013

M/s. Oriental Insurance Company Limited,
Branch Office,
Mettukuppam,
Chennai - 600 097. .. Appellant/3rd Respondent

Vs.

1.P.Muthusamy ..1st Respondent/Claimant

2.P.Sudhakar ..2nd Respondent/1st Respondent
3.R.Maharaja ..2nd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.09.2012 made in M.C.O.P.No.120 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram, Erode.

For Appellant : Mr.J.Chandran
For R1 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 06.09.2012 made in M.C.O.P.No.120 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram, Erode.

3.The appellant is the 3rd respondent in M.C.O.P.No.120 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram, Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.11.2010.

4.According to the 1st respondent, on 19.11.2010 at about 08.45 P.M., while he was riding his motorcycle bearing

Registration No.TN 40 X 3460 on Coimbatore – Annur Main road, near Annur Government Hospital, the 2nd respondent who was riding the motorcycle bearing Registration No.TN 63 D 4858 in the opposite direction in a rash and negligent manner, came and dashed against the 1st respondent's motorcycle and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him against the respondents 2, 3 and appellant-Insurance Company, being the rider, owner and insurer of the motorcycle respectively.

5.The respondents 2 and 3, rider and owner of the motorcycle bearing Registration No.TN 63 D 4858 respectively remained exparte before the Tribunal.

6.The appellant-Insurance Company, being the insurer of the motorcycle bearing Registration No.TN 63 D 4858 filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, both the respondents 1 and 2 were not possessing valid driving license at the time of accident. The 2nd respondent rode the motorcycle with due care and caution and the 1st respondent only suddenly came into the middle of the road in a rash and negligent manner without minding the approaching vehicle in front of him and invited the accident. Hence, contributory negligence has to be fixed on the part of the 1st respondent. The 1st respondent has to prove that the 3rd respondent's motorcycle was covered at the material time under the policy number 412190/31/2011/85 for the period from 27.04.2010 to 26.04.2011. The 1st respondent has to prove that the 3rd respondent's motorcycle was having Registration Certificate and Insurance Policy at the time of accident. The 3rd respondent's motorcycle was not having valid Insurance Policy at the time of accident. The 3rd respondent has to furnish the particulars of policy, date, time and place of accident, particulars of injured and the name of the driver and particulars of the driving license but the 3rd respondent has not complied with statutory demand. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The Annur Police Station has failed to forward the documents and not complied with the statutory demand. The 1st respondent has to prove that a Criminal Case has been registered before the Annur Police Station in Crime No.736/2010 under Sections 279 and 338 of I.P.C. against the 2nd respondent. The 1st respondent has to prove his age, avocation, income, nature of injuries, period of treatment taken and disability by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.The appellant-Insurance Company filed additional counter statement and denied various averments made by the 1st respondent. According to the appellant, the cheque given by the 3rd respondent to appellant for the insurance premium was returned on 29.04.2010 due to insufficient funds and in view of the same, the Insurance Policy for the 3rd respondent's motorcycle was rejected by the appellant on 05.05.2010. The accident occurred after the date of rejection of Insurance Policy and there was no valid insurance policy for the 3rd respondent's motorcycle and hence, the appellant is not liable to pay any compensation to the 1st respondent. Only the respondents 2 and 3 are liable to pay compensation to the 1st respondent and prayed for dismissal of the claim petition against the appellant.

8.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.K.Periyasamy was examined as P.W.2 and 26 documents were marked as Exs.P1 to P26. On behalf of the appellant-Insurance Company, one Mohankumar was examined as R.W.1 and 6 documents were marked as Exs.R1 to R6.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 3rd respondent and directed the appellant-Insurance Company, the insurer of the motorcycle to pay a sum of Rs.2,40,120/- as compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent-owner of the motorcycle bearing Registration No.TN 63 D 4858.

10.Against the said award dated 06.09.2012 made in M.C.O.P.No.120 of 2011, the appellant has come out with the present appeal.

11.The learned counsel appearing for the appellant-Insurance Company contended that the policy issued by the appellant-Insurance Company for the offending vehicle was canceled on 05.05.2010, while so the accident has occurred on 19.11.2010. On the date of accident, there was no policy in force for the offending vehicle. The cheque dated 27.04.2010 issued by the 3rd respondent for insurance premium was dishonored and returned by the Drawee Bank/HSBC Bank on 29.04.2010. The insurance policy was canceled on 05.05.2010 and cancellation of insurance policy was intimated to the owner of the motorcycle and the same was returned due to refusal by the 3rd respondent on 04.01.2012. Hence, appellant is not liable to pay the compensation to the 1st respondent. In any event, the assessment of permanent disability at 34% and amounts awarded for 34% of disability is excessive and prayed for setting aside the award passed by the Tribunal.

12.The learned counsel appearing for the 1st respondent made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14.From the materials available on record, it is seen that it is the contention of the 1st respondent that while he was riding his motorcycle, the 2nd respondent drove the motorcycle bearing Registration No. TN 63 D 4858 in a rash and negligent manner and dashed against the motorcycle which the 1st respondent was riding and caused the accident. In the accident, the 1st respondent sustained injuries and filed claim petition claiming compensation for the injuries sustained by him. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1 and Ex.P9/copy of certificate given by the Inspector, Annur Police Station to show that 2nd respondent admitted his guilt and paid fine. On the other hand, the appellant contended that accident occurred only due to negligence on the part of the 1st respondent and not due to the negligence on the part of the 2nd respondent. The appellant has not examined the 2nd respondent or any eyewitness to prove their contention. The Tribunal considering the evidence of P.W.1 and documents filed by the 1st respondent, held that accident occurred only due to rash and negligent riding by the 2nd respondent. There is no error in the said finding of the Tribunal.

15.The contention of the learned counsel appearing for the appellant is that cheque dated 27.04.2010 issued by 3rd respondent for premium for the policy was dishonored by the Drawee Bank/HSBC Bank on 29.04.2010 and the policy issued for the 3rd respondent's motorcycle was canceled on 05.05.2010. The accident occurred on 19.11.2010, after cancellation of policy and hence appellant is not liable to pay compensation. Ex.R5/notice returned due to refusal by the owner is dated 04.01.2012. The appellant has not filed any document to show that cancellation of policy was intimated to the 3rd respondent-owner of the motorcycle or concerned R.T.O. before the date of accident. The return cover is 04.01.2012 long after the accident. In view of the above fact, it is clear that the appellant has not intimated the cancellation of policy to 3rd respondent or concerned R.T.O. before the date of accident and hence, policy was in force on the date of accident. For the above reason, the award of the Tribunal ordering pay and recovery is valid and not interferred with.

16.As far a quantum of compensation is concerned, the 1st respondent has examined himself as P.W.1 and examined P.W.2/Doctor and filed documents to show the treatment taken. The Tribunal considering the evidence of P.W.2/Doctor, nature of injuries and treatment taken, awarded compensation under different heads which are not excessive warranting interference by this Court.

17.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,40,120/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount if any already deposited, 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.120 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court No.III, Dharapuram, Erode, at the first instance and recover the same from the 3rd respondent. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk
To
1.Additional District Judge No.III,
Motor Accidents Claims Tribunal,
Dharapuram,
Erode.

Copy to :The Section Officer,
VR Section,
High Court,Madras.
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 37332

VBA(CO)
RMP(11/05/2021)