

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1205 of 2013
and M.P.No.1 of 2013

The Divisional Manager
United India Insurance Co. Ltd.
No.16, I floor, J.N.street
Puducherry.

... Appellant /2nd Respondent

Vs.

1.Maya

...1st Respondent/Claimant

2.Sithirajwsewan

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2011 made in M.C.O.P.No.1027 of 2006 on the file of Motor Accident Claims Tribunal, Principal District Court, Pondicherry.

For Appellant : Mr.M.J.Vijayaraghavan

For R1 : Mr.R.Natarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 29.04.2011 made in M.C.O.P.No.1027 of 2006 on the file of Motor Accident Claims Tribunal, Principal District Court, Pondicherry.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1027 of 2006 on the file of Motor Accident Claims Tribunal, Principal District Court, Pondicherry. The 1st respondent filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.07.2006.

3.According to the 1st respondent, on the date of accident i.e., on 17.07.2006, at 08.30 p.m., while the 1st respondent was walking along Thiruvalluvar salai, Nellithope, Puducherry, on

her left opposite to Muthalamman koil, a Hero Honda Splendor motorcycle belonging to the 2nd respondent, driven by its rider in a rash and negligent manner from East to West direction, dashed on the 1st respondent and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and appellant.

4.The 2nd respondent, owner of the motorcycle remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and stated that the accident has occurred only due to negligent act of the 1st respondent. The 1st respondent without noticing the on-coming vehicle, crossed the road and invited the accident. There is a delay in lodging the complaint and that the 1st respondent suppressed the fact and mentioned the vehicle which has not caused the accident. Therefore, the appellant/Insurance Company is not liable to pay compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, occupation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, son of P.W.1 viz., Venkatesan, eye-witness to the accident was examined as P.W.2 and Dr.R.V.Krishnakumar was examined as P.W.3 and marked eight documents as Exs.A1 to A8. The appellant/Insurance Company examined one Mr.Hemachandran, Inspector of Police, as R.W.1 and marked a copy of final report issued by Traffic Police Station as Ex.B1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,27,000/- as compensation to the 1st respondent.

8.Against the said award dated 29.04.2011 made in M.C.O.P.No.1027 of 2006, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in accepting the evidence of R.W.1 and ought to have seen that the address of the 1st respondent and rider of the motorcycle are one and the same.

The Tribunal failed to note that there is contradictory statement with the name of the rider of the motorcycle which creates suspicion in respect of the motorcycle and identity of the rider of the motorcycle. In the investigation report, the rider name is mentioned as Natarajan, who did not possess driving license at the time of accident. In any event, the amount awarded by the Tribunal towards 28% disability is excessive and prayed for setting aside the award of the Tribunal and allowing this appeal.

10. The learned counsel appearing for the 1st respondent contended that the 1st respondent by examining herself as P.W.1 and her son who was an eye-witness to the accident as P.W.2 proved that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. F.I.R. was registered against the rider of the motorcycle who admitted the guilt and paid fine. The appellant/Insurance Company has not let in any evidence to disprove the identity of one Prabhakaran, rider of the motorcycle. R.W.1/Inspector of Police, witness of the appellant, has admitted in his cross-examination that by mistake, he mentioned the address of the rider of the motorcycle as the address of the 1st respondent. The Tribunal considering the nature of injuries, age, percentage of disability and nature of work done by the 1st respondent, has awarded a lump sum amount towards disability. The total compensation awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal.

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

12. From the materials on record, it is seen that the 1st respondent has contended that the rider of the motorcycle belonging to the 2nd respondent rode the motorcycle in a rash and negligent manner, dashed against the 1st respondent and caused the accident. The 1st respondent as P.W.1 and by examining her son as P.W.2, eye-witness, proved that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. F.I.R. was registered against one Prabhakaran, rider of the motorcycle, who caused the accident. The said Prabhakaran has admitted his guilt and paid fine. According to the appellant/Insurance Company, as per the investigation report, one Natarajan was the rider of the motorcycle at the time of accident and he did not possess driving license. The learned counsel appearing for the appellant has not stated that whether investigation was done by the Police or by the official of the appellant/Insurance Company. The appellant has not filed the alleged investigation report showing

that Natarajan was the rider of the motorcycle at the time of accident. The Tribunal considering all the materials placed before him in proper perspective, has held that Prabhakaran was the rider of the motorcycle at the time of accident and that he was responsible for the accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as quantum of compensation is concerned, the 1st respondent claimed that she was working as a tailor and was earning a sum of Rs.300/- per day. She suffered injuries as mentioned in the medical report and as per the evidence of P.W.3/Doctor. The 1st respondent was aged 35 years at the time of accident. The Tribunal considering the avocation, age, nature of injuries, percentage of disability and evidence of P.W.3/Doctor, awarded a lump sum of Rs.1,00,000/- towards 28% disability, which is in order. In addition to that, the Tribunal awarded a sum of Rs.27,000/- towards pain and suffering, extra nourishment, attendant charges and future inconvenience. The total compensation awarded by the Tribunal is not excessive and the same does not warrant any interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,27,000/- 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 entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
Motor Accident Claims Tribunal
Pondicherry.

2.The Section Officer
VR Section,High Court
Madras.

+2cc to Mr.R.Natarajan, Advocate, S.R.No.32624

C.M.A.No.1205 of 2013
and M.P.No.1 of 2013

VBA (CO)
CB (27/05/2021)



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