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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1637 of 2010
and
Cross Objection No.91 of 2013
and
M.P.No.1 of 2010

C.M.A.No.1637 of 2010:

United India Insurance Company Limited,
Branch Office, No.5-B/11,
SBI Upstairs, Salem Road,
Rasipuram.

..Appellant

Vs.

1.Periyasamy

2.B.Nirmala

3.Arul Prakasam

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.10.2008 made in M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellant : Mr.M.J.Vijayaraghavan

For R1 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

R2 & R3 : Exparte before the Tribunal

Cross Objection No.91 of 2013:

Periyasamy

..Cross Appellant

Vs.

1.M/s. United India Insurance Company Limited,
Branch Office,
No: 5-B/11, SBI Upstair,
Salem Road, Rasipuram,
Namakkal District.



2.B.Nirmala

3.Arul Prakasam

.. Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 16.10.2008 made in M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Cross Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R1 : Mr.M.J.Vijayaraghavan

R2 & R3 : Exparte

C O M M O N J U D G M E N T

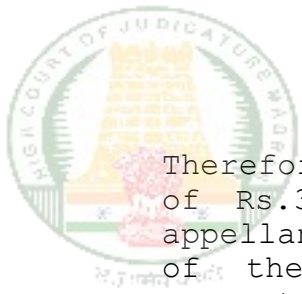
The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 16.10.2008 made in M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

3.The Cross-Objection has been filed by the claimant in M.C.O.P.No.136 of 2008 seeking enhancement of compensation granted by the Tribunal in the award dated 16.10.2008 made in M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram. The 1st respondent filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.12.2003.

5.According to the 1st respondent, on 14.12.2003 at about 05.30 P.M., while he was riding his TVS Champ motorcycle bearing Registration No.TN 28 Z 1096 on Rasipuram - Attur Main Road at Koneripatty Earikarai, near Ganapathy Ganapathygounder Thottam, the 3rd respondent-rider of the motorcycle bearing Registration No.TN 28 S 7972, who was riding the motorcycle from the opposite direction in a rash and negligent manner, came and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over his body. Immediately after the accident, he was taken to P.M.Hospital, Rasipuram for first aid and thereafter he was referred to Ganga Hospital, Coimbatore for further treatment.



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Therefore, he filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation against the 2nd respondent, appellant and 3rd respondent being the owner, insurer and rider of the motorcycle bearing Registration No.TN 28 S 7972 respectively.

6.The respondents 2 and 3 being the owner and rider of the motorcycle bearing Registration No.TN 28 S 7972 respectively remained exparte before the Tribunal.

7.The appellant-Insurance Company, insurer of the motorcycle bearing Registration No.TN 28 S 7972 filed counter statement and denied all the averments made by the 1st respondent and also denied the nature of accident. The 1st respondent and the 3rd respondent were not possessing valid driving license at the time of accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent. As per the Wound Certificate, only two injuries are grievous and all other injuries were only simple injuries. A false case has been registered by the Police in Crime No.1082/2003. The 1st respondent has to prove his age, avocation, income, nature of injuries, disability, period of treatment taken and the medical expenses incurred by him 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.

8.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Sampathkumar was examined as P.W.2 and 10 documents were marked as Exs.P1 to P10. On behalf of the appellant-Insurance Company, one Sundararajan, Branch Manager of the appellant-Insurance Company was examined as R.W.1 and copy of the Insurance Policy was marked as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has 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 the insurer of the motorcycle to pay a sum of Rs.1,25,000/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the motorcycle bearing Registration No.TN 28 S 7972 on the ground that rider of the motorcycle-3rd respondent was not possessing driving license at the time of accident.

10.Against the said award dated 16.10.2008 made in M.C.O.P.No.136 of 2008, the appellant-Insurance Company has come out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has come out with the present cross objection for enhancement of compensation.



11.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal having held that rider of the motorcycle bearing Registration No.TN 28 S 7972 - 3rd respondent did not possess driving license at the time of accident, erred in ordering pay and recovery. The owner of the motorcycle bearing Registration No.TN 28 S 7972, the 2nd respondent is none other than the Sister of the 3rd respondent. Knowing fully well that 3rd respondent did not possess driving license, the 2nd respondent permitted him to ride the motorcycle and violated the policy conditions. The Tribunal ought not to have held that appellant is liable to pay the compensation and ordered pay and recovery. Hence, the appellant-Insurance Company is not liable to pay any compensation. In support of his contention, the learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court reported in 2018 (2) TNMAC 494 (SC), [Ram Chandra Singh Vs. Rajaram and others].

11(i).The learned counsel appearing for the appellant further contended that the appellant filed an appeal in C.M.A.No.1637 of 2010 challenging the liability alone. In the absence of questioning the quantum, the Cross Objection filed by the 1st respondent is not maintainable and relied on the judgment of the Division Bench of this Court reported in 2004 (1) TNMAC 144 (DB), [Branch Manager, New India Assurance Company Limited, Palamore Road, Nagercoil Branch, Nagercoil Village, Agatheswaram Taluk, Kanyakumari District Vs. Salat Mary & Others] and prayed for setting aside the award of the Tribunal and for dismissal of Cross Objection No.91 of 2013 filed by the 1st respondent.

12.Per contra, the learned counsel appearing for the 1st respondent contended that the appellant failed to prove that the 3rd respondent did not possess driving license at the time of accident. The appellant has not examined any official from the R.T.O. to prove that 3rd respondent did not possess driving license at the time of accident. The admission of 3rd respondent in Criminal Proceedings that he did not possess driving license at the time of accident cannot be relied on by the appellant to contend that 3rd respondent did not possess driving license at the time of accident. The learned counsel appearing for the 1st respondent further contended that Motor Vehicles Act is a beneficial legislation and third party right should be protected. In support of his contention, he relied on the following judgments:

12(i).A judgment of this Court reported in 2012 (1) TNMAC 226, [ICICI Lombard General Insurance Company Limited Vs. Annakkili and others] and contended that unless an official from R.T.O. is examined, the admission of driver in the Criminal



Proceedings cannot be taken into account. The learned counsel also referred to the judgment of this Court reported in 2020 SCC Online Mad 4479, [V.K.Nalliappan Vs. Amirdham and others], (delivered by me) and contended that award of the Tribunal ordering pay and recovery has to be confirmed and prayed for dismissal of the appeal.

13. Heard the learned counsel appearing for the appellant-Insurance Company 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 the 1st respondent filed the claim petition claiming compensation for the injuries sustained by him in the accident that occurred on 14.12.2003. According to the 1st respondent, while he was riding his TVS Champ motorcycle bearing Registration No.TN 28 Z 1096, the 3rd respondent rider of the Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972, rode the same in a rash and negligent manner and dashed against the TVS Champ ridden by the 1st respondent and caused the accident. To prove the said contention, the 1st respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1 and deposed to that effect. The Tribunal considering the evidence of P.W.1 and Ex.P1/F.I.R. and in the absence of contra evidence, held that accident occurred only due to rash and negligent riding by the rider of the Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972, the 3rd respondent. The 3rd respondent was prosecuted and in the Criminal Case, he admitted that he did not possess driving license on the date of accident and paid fine. The Tribunal considering the admission of 3rd respondent, Exs.P4, P5 and the fact that the 3rd respondent failed to produce the driving license and also admission of 3rd respondent in the Criminal Case, directed the appellant-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972.

15. It is no doubt true that contents of F.I.R. and criminal proceedings are not the sole criteria for fixing negligence or the driver was not having driving license at the time of accident. At the same time, the said proceedings can be considered by the Tribunal along with materials placed before it for arriving at a conclusion. In the present case, the 3rd respondent was prosecuted not only for rash and negligent riding, but also for not possessing driving license. The 3rd respondent admitted his guilt including his charge for not possessing driving license and paid fine. The 1st respondent produced Ex.P3/Motor Vehicle Inspector report, wherein the Motor Vehicle Inspector has stated that 3rd respondent has not produced his driving license. The Tribunal considering the above fact



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along with Exs.P3 to P5, held that 3rd respondent did not possess driving license. In the judgment of this Court reported in 2012 (1) TNMAC 226, [cited supra], relied on by the learned counsel for 1st respondent, this Court did not hold that admission of driver of non possessing driving license cannot be taken into consideration for coming to definite conclusion that driver of the vehicle did not possess valid driving license. This Court has held that even clear admission of guilt of non-possessing of driving license before the Criminal Court by the driver would not lead to definite conclusion that insured failed to exercise due care regarding use of vehicle and committed breach of policy condition. In the present case, the 2nd respondent-owner of Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972 is sister of the 3rd respondent. The 2nd respondent knowing fully well that 3rd respondent did not possess driving license, allowed the 3rd respondent to ride the motorcycle. The Tribunal considering all the materials placed before it, including Ex.P5/Judgment in Criminal Court, wherein the 3rd respondent admitted that he did not possess driving license and Ex.P3/Motor Vehicle Inspector's report that 3rd respondent did not produce the driving license, held that at the time of accident the 3rd respondent did not possess driving license. The respondents 2 and 3 remained exparte in the claim petition and the finding of the Tribunal that 3rd respondent did not possess driving license is not challenged by the respondents. The judgment of this Court relied on by the learned counsel appearing for the 1st respondent reported in 2020 SCC Online Mad 4479, [referred to above] is not applicable to the facts of the present case as the said appeal was filed by the owner of the vehicle challenging the award ordering pay and recovery. The present appeal is filed by the Insurance Company contending that Insurance Company is not liable to pay compensation. The Hon'ble Apex Court in the judgment reported in AIR 2020 SC 4453, [Beli Ram Vs. Rajinder Kumar] held that when the driver of the offending vehicle did not renew the license, it amounts to non-possession of driving license and Insurance Company is not liable to pay the compensation. The ratio in the said judgment is squarely applicable to the facts of the present case.

16.For the above reasons, the respondents 2 and 3, being the owner and rider of the Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972 respectively are liable to pay the compensation to the 1st respondent. It is made clear that if any amount is deposited by the appellant-Insurance Company and the same was withdrawn by the 1st respondent, the appellant is not entitled to recover the same. The appellant is permitted to recover the amount only from the 2nd respondent. The 2nd respondent, being the owner of Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972 is liable to pay the compensation to the 1st respondent.



17.The compensation awarded by the Tribunal at Rs.1,25,000/- along with interest and costs is confirmed. The 2nd respondent-owner of Bajaj Kaliber motorcycle bearing Registration No.TN 28 S 7972 is directed to deposit the award amount, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.136 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

18.In the result, the Civil Miscellaneous Appeal filed by the appellant-Insurance Company is allowed. In view of allowing the appeal, the Cross Objection filed by the 1st respondent is also dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

krk
To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Rasipuram.

Copy to
The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 37831.

C.M.A.No.1637 of 2010 and
Cross Objection No.91 of 2013

VBA (CO)
SP(17/08/2021)