

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.02.2020

Judgment pronounced on : 10.03.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2146 of 2010

G.Venkatesan Appellant/ Petitioner

Versus

1.K.Gunasekaran

2.The Branch Manager,
National Insurance Company Ltd.,
Pudukottai Road,
Trichy District. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.02.2010 passed in M.C.O.P.No.38 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Nagapattinam.

For Appellant : Mr.M.Thamizhavel

For Respondents: Mrs.S.K.Subathra, (for R2)
for Mr.S.Vadivel

: No Appearance - R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 08.02.2010 passed in M.C.O.P.No.38 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Nagapattinam.

2.For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3.It is a case of injury. The case of the claimant is that on 18.07.2008, when at the time, the claimant went to Ettukudi for obtaining his Hall ticket as pillion rider in TVS Star City TN-51-D-2527, near to Thamaraikulam curve, the rider of the said vehicle drove the same in a rash and negligence manner and dashed against the TVS XL Super, which was coming from the opposite direction. As a result of which, the claimant was thrown away from the bike and sustained grievous injuries on his rib, head, left thigh, right elbow, left leg and right patella. Immediately, after the occurrence, he was admitted in the Best Medical Centre, Tiruthuraipoondi. Due to the injuries, the claimant is not able to do any work. The accident had occurred due to reckless riding of the TVS Star City motorcycle, driven by his friend. A case has been registered in Crime No.93 of 2008 under Sections 279 and 337 of I.P.C., against the driver of the vehicle, in which, the claimant was travelled as a pillion rider. After the accident, due to the fracture on his right patella, the claimant was unable to attend the annual examination. Therefore, the claimant, claims Rs.3 Lakhs as compensation for the injury sustained in the accident. Since the first respondent is the owner of the offending vehicle and the second respondent is the insurer, both are severally and jointly responsible to pay the compensation. Hence, the claim petition.

4.The first respondent remained ex-parte before the Claims Tribunal.

5.Opposing the claim made by the claimant, by filing counter, the second respondent/Insurance company states that the accident had occurred due to the rash and negligent act of the first respondent. They denied that the vehicle bearing registration No.TN-51-D-2527, in which the claimant travelled, was insured with them at that time of accident. The policy issued by the second respondent/Insurance company does not extend coverage to the pillion rider. Accordingly, the second respondent is not liable to pay the compensation to the pillion rider/claimant. The age, avocation and income of the appellant/claimant are also denied. In any event, the amount claimed as compensation by the claimant is highly excessive. Hence, the second respondent/Insurance Company has prayed for dismissal of the Claim Petition.

6.Before the Claims Tribunal, the appellant [G.Venkatesan] examined himself as P.W.1 and one Dr.Angathakumar, who issued disability certificate to the claimant was examined as PW.2, further, on the side of the claimant 15 documents were marked as Ex.P1 to Ex.P15. Per contra, on the side of the respondents one G.Vin/kar/servida was examined as RW.1 and the Investigation report, dated 28.04.2009 was marked as Ex.R1.

7. Having considered all the materials placed before the Tribunal, the learned Claims Tribunal has come to the conclusion that the second respondent is not liable to pay the compensation to the claimant, however awarded a sum of Rs.94,794/- as compensation in favour of the claimant and directed the first respondent to pay the same to the claimant, within a period of two months from the date of petition along with 7.5% interest per annum. Challenging the said award, the claimant is before this Court with the present Civil Miscellaneous Appeal.

8. When the appeal is taken up for hearing, I have heard the arguments of Mr. M. Thamilzhavel, learned counsel for the appellant, Mr. S. K. Subathra, learned counsel appearing for the second respondent and also perused the records carefully.

9. The sole contention raised by the learned counsel for the claimant is that though the Tribunal had passed an award of Rs.94,794/- as total compensation, it was ordered that compensation should be paid by the first respondent, accordingly, the liability was fixed against the first respondent and not against the second respondent, which is erroneous in law. Only in this regard, he prayed to allow this appeal.

10. Per contra, the learned counsel appearing on behalf of the second respondent-Insurance company would contend that during the time of accident, the vehicle in which the claimant travelled as pillion rider, was driven by its rider without having any valid license. Accordingly, the finding arrived at by the Claims Tribunal is absolutely correct and interference of this Court is not necessary.

11. Now, on considering the rival submissions made by the learned counsel on either side, before the Claims Tribunal, in order to prove the violation of the policy condition, a staff of the insurance company was examined as RW.1. Though he gave evidence in support of the second respondent, during the time of his cross-examination, he has specifically stated that at the time of occurrence, the policy was in force. Accordingly, it is the specific case of the second respondent, before the Claims Tribunal is that at the time of accident, the rider of the vehicle was not possessed with valid license. In otherwise, in respect to the policy taken by the first respondent, he has not disputed the same. In the said occasion, it is not necessary to see whether the second respondent is having the liability to pay the compensation so fixed or not.

12. In this occasion, it is relevant to see the Judgment of our Hon'ble Apex Court in the case of Shamanna and another Versus The Divisional Manager, the Oriental Insurance Co. Ltd., and Others, reported in 2018 (9) SCC 650, wherein it is held that as follows:-

"7. The Supreme Court considered the decision of National Insurance Co. Ltd. V. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733 in subsequent decision in National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700, wherein this Court held that : (SCC p. 705, para 5)

"5. The decision in Swaran Singh case has no application to cases other than third party risks and in case of third-party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured".

8. The same principle was reiterated in Prem Kumari v. Prahlad Dev and others in (2008) 3 SCC 193.

and

"14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224, wherein this Court held that : (SCC p. 226, para 8)

"8. for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

So, following the principles laid down by our Hon'ble Apex Court, in this case also, since the policy issued by the second respondent is in force at the time of accident, it is necessary to issue a direction to the second respondent to pay the compensation with liberty to recover the same from the owner of the vehicle without filing formal application.

13.Coming to the point of quantum, the learned counsel appearing for the second respondent has not disputed the quantum of compensation fixed by the Claims Tribunal as excessive one.

14.Accordingly, the Civil Miscellaneous Appeal is partly allowed by modifying the order dated 08.02.2010 passed in M.C.O.P.No.38 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Nagapattinam, and it is ordered as follows:-

(i) the appellant/claimant is entitled to the award amount of Rs.94,794/- [Rupees Ninety Four thousand, Seven hundred and ninety four only] as determined by the Tribunal, along with 7.5% interest per annum from the date of petition till the date of realisation.

(ii) the second respondent is directed to pay the compensation and recover the same from the first respondent and this Court directs to deposit the award amount along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iii) on such deposit, the appellant [claimant] in this appeal is permitted to withdraw the same, by moving necessary application before the Tribunal.

(iv) the claimant is directed to pay necessary Court fee, if any, on the awarded compensation. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal /
Chief Judicial Magistrate, Nagapattinam.

Copy to:

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

+1cc to Mr.S.Vadivel , Advocate SR.No. 20994

+1cc to Mr.M.Thamizavel , Advocate SR.No. 21428

+1cc to M/s.D.Malarvizhi , Advocate SR.No. 22525

C.M.A.No.2146 of 2010

A.SK(05.03.2021)