

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1215 of 2015

National Insurance Company Limited,
Vigneswara Building,
Near overbridge, 2/7, Pudukottai Road,
Tiruchirapalli 620 020. ... Appellant/2nd Respondent

Vs.

1.Karunaiammal 1st Respondent/Claimant

2.Senthilkumar2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.02.2014 made in M.C.O.P.No.1525 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirupur.

For Appellant : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 17.02.2014 made in M.C.O.P.No.1525 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirupur.

2.The appellant is the second respondent in M.C.O.P.No.1525 of 2008 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Tirupur. The first respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 07.10.2008.

3.According to the first respondent, on 07.10.2008, while the first respondent was travelling as a pillion rider in a TVS Victor motorcycle rode by the 2nd respondent/owner of the motorcycle on the muthanampalayam, vaikalmedu village, in front of Vravo Impex Company, the second respondent drove the vehicle in a rash and negligent manner without adhering traffic rules

and regulations and dashed against one pedestrian. Due to which, the first respondent fell down on the road and sustained greivous injuries all over her body. Thus the first respondent filed claim petition claiming compensation against the second respondent and appellant/Insurance Company being the owner and insurer of the offending vehicle respectively.

4.The second respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the first respondent travelled as a pillion rider at the time of the accident and the insured has not paid any additional premium to cover the pillion rider in the policy. The vehicle was not insured for the pillion rider and hence the appellant is not liable to pay any compensation to the first respondent. At the time of accident, the rider of the vehicle did not possess a valid driving license to ride the heavy motorcycle. Hence, the appellant is not liable to pay any compensation to the first respondent and prayed for dismissal of the claim petition.

6.Before the Tribunal, the first respondent examined herself as P.W.1, one Doctor was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On the side of the appellant/Insurance Company, two witnesses were examined as RW.1 and R.W.2 and 3 documents were marked as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the second respondent, owner of the motorcycle and insured with the appellant and directed the appellant to pay a sum of Rs.66,260/- as compensation to the first respondent at the first instance and recover the same from the owner of the vehicle, the second respondent herein as the second respondent did not possess driving license at the time of accident.

8.Challenging the said award dated 17.02.2014 made in M.C.O.P.No.1525 of 2008 granting compensation to the first respondent, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance submitted that the Tribunal failed to note that the relationship between the first respondent and the second respondent/ owner of the vehicle are mother and son and the first respondent who was a pillion rider cannot be treated as a third party. The second respondent did not possess valid driving license to ride the motorcycle. The Tribunal ought to have

dismissed the claim petition as against the appellant and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials on record.

11. It is the contention of the first respondent that the accident had occurred due to rash and negligent riding by the rider of the motorcycle/ second respondent herein. The first respondent has travelled in the motorcycle as a pillion rider. The contention of the appellant that the first respondent who is mother of the second respondent has travelled as a pillion rider and hence, she is not a third party is without merits. It is well settled that when the rider of the motorcycle possess LMV licence, but not the licence to drive the two-wheeler, the Insurance Company cannot be exonerated and Insurance Company has to pay the compensation at the first instance and recover the same from the second respondent / owner of the vehicle. The Tribunal has applied the well settled Judicial pronouncements and ordered pay and recovery. There is no error warranting interference by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.66,260/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount, at the first instance and recover the same from the second respondent/owner of the motorcycle, 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 first respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr

To

1. The II Additional District Judge,
The Motor Accident Claims Tribunal,
Tirupur.

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 6253

C.M.A.No.1215 of 2015

CP (CO)
GN (08/02/2021)



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