

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.868 of 2010

N.Nallasamy

.. Appellant / Claimant

Vs.

1.C.Vasu

2.S.Shajahan
(Respondents 1 & 2 set exparte before
the Tribunal) and hence given up

3.Cholamandalam M.S.General Insurance
Company Limited,
551, T.B.Road, Alangar Building,
R.S.Puram, Coimbatore - 641 018.

4.United India Insurance Company Limited,
1170, Mettur Road,
Muthaiah Complex, 2nd Floor,
Erode - 638 011.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the judgment and
decree dated 22.07.2009 made in M.C.O.P.No.27 of 2007 on the
file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

For Appellant : Mr.P.Parthikannan for
Mr.S. Kaithamalai Kumaran

For R3 : Mr.E.Rajadurai for
Mr.N.Vijayaraghavan

For R4 : Mrs.R.Sreevidhya

R2 : No appearance

R1 : Given up

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award dismissing the claim petition as against the 3rd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 22.07.2009 made in M.C.O.P.No.27 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

2.The appellant is claimant in M.C.O.P.No.27 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani. He filed the 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 03.07.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider of the motorcycle belonging to the 2nd respondent and directed the respondents 1 & 2 to jointly and severally pay a sum of Rs.84,130/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 3 & 4, who are insurer of the offending motorcycle and the motorcycle driven by the appellant.

4.Challenging the portion of the award dismissing the claim petition as against the 3rd respondent and not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.Though the learned counsel appearing for the appellant raised various grounds in the grounds of appeal with regard to enhancement of compensation, at the time of arguments, he restricted his arguments only with regard to dismissal of the claim petition as against the 3rd respondent.

6.The learned counsel appearing for the appellant contended that there was a valid insurance for the motorcycle driven by the 1st respondent. The Tribunal failed to consider the same and erred in holding that rider of the offending motorcycle did not possess valid driving license at the time of accident and dismissed the claim petition as against the 3rd respondent/Insurance Company, who is the insurer of the said offending motorcycle. As per the various judgments of the

Hon'ble Apex Court, in certain contingencies, though the insurance company may not be liable, it is required to satisfy the award at the first instance and recover the same from the owner of the offending vehicle. The Tribunal ought to have ordered pay and recovery and prayed for setting aside the portion of the award dismissing the claim petition as against the 3rd respondent/Insurance Company from its liability.

7. Per contra, the learned counsel appearing for the 3rd respondent and 4th respondent/Insurance Company separately made their submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the respondents 3 & 4 and perused all the materials available on record.

9. From the materials available on record, it is seen that the Tribunal dismissed the claim petition as against the 3rd respondent/Insurance Company, insurer of the offending motorcycle only on the ground that rider of the offending motorcycle did not possess valid driving license at the time of accident. The said reason for dismissal of the claim petition against the 3rd respondent is erroneous. As per the judgment of the Hon'ble Apex Court, if the rider of the two wheeler or driver of the four wheeler did not possess driving license, the Insurance Company must satisfy the award at the first instance, recover the same from the owner of the vehicle and the Insurance Company cannot be exonerated from its liability. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition against the 3rd respondent/Insurance Company on the ground that the first respondent, the rider of the offending motorcycle belonging to the 2nd respondent did not possess valid driving license alone is set aside and the 3rd respondent/Insurance Company is directed to pay the compensation of Rs.84,130/- to the appellant at the first instance and recover the same from the 2nd respondent/owner of the offending motorcycle.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the portion of the award dismissing the claim petition as against the 3rd respondent alone is set aside. The compensation awarded by the Tribunal at Rs.84,130/- along with interest and costs is confirmed. The 3rd respondent/Cholamandalam M.S.General Insurance Company Limited, is directed to deposit

the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the 2nd respondent. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

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

1 cc to Mr.N. vijayaraghavan, Advocate, Sr. 21767
1 cc o Mr.S. Kaithamalai Kumara, Advocate, Sr. 21226
1 cc to M/s.R. Sreevidhya, Advocate, Sr. 22093

C.M.A.No.868 of 2010

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