

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1478 of 2013
and M.P. No. 1 of 2013

The Branch Manager
United India Insurance Co. Ltd.
Micro Office, Behind Central Theatre
Gandhi Nagar
Krishnagiri - 635 001. ... Appellant/2nd Respondent

Vs.

1.Gnaneswari ...1st Respondent/Claimant
2.M.Velu @ Vadivelu ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.05.2011, made in M.C.O.P. No. 249 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri.

For Appellant : Ms. I. Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 31.05.2011, made in M.C.O.P. No. 249 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No. 249 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri. The 1st 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 09.08.2006.

3.According to the 1st respondent, on the date of accident viz., 09.08.2006, when she was standing on the left side of the road to go to Beeda Stall situated near Dharmaraja Koil in the Oldpet road, the rider of the Hero Honda Motor cycle bearing

Registration No. TN 28 E 2332 belonging to the 2nd respondent, drove the same in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries and hence, filed the claim petition, claiming compensation against the 2nd respondent and appellant as owner cum rider and insurer of the vehicle respectively.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied various averments made by the 1st respondent in the claim petition. According to the appellant, the Motorcycle belonging to the 2nd respondent was insured with the appellant, but the rider of the Motorcycle did not possess driving license at the time of accident, for which he was convicted and fined by the Judicial magistrate, Krishnagiri vide order in STC No. 861/2006 dated 28.08.2006. For such violation of the policy condition, the appellant is not liable to pay any compensation to the 1st respondent. In any event, the 1st respondent has to prove the age, avocation, income, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one Doctor as P.W.2 and marked 8 documents as Exs.P1 to P8. The appellant examined one witness as R.W.1 and marked two documents as Exs.R1 & R2.

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, as insurer, to pay a sum of Rs.1,50,500/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8.Against the said award dated 31.05.2011, made in M.C.O.P. No. 249 of 2008, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in awarding compensation to the 1st respondent in the absence of any documentary evidence to show that the accident has occurred due to negligent act of the rider of the two wheeler belonging to the 2nd respondent. The Tribunal failed to consider that the rider of the two wheeler did not possess driving licence at the time of accident. The appellant examined R.W.1 to prove that the rider of the two wheeler did

not possess driving licence at the time of accident. In the absence of driving licence, the Tribunal erred in directing the appellant to pay compensation at the first instance and recover the same from the 2nd respondent. The Tribunal without properly considering the nature of injuries and disabilities suffered by the 1st respondent, adopted multiplier method for awarding compensation and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant and perused the materials available on record.

11. From the materials placed on record, it is seen that it is the contention of the 1st respondent that while she was standing on the road, the rider of the motorcycle belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the 1st respondent and caused accident. In the accident, according to the 1st respondent, she suffered head injuries and grievous injuries through out her body. To substantiate the said contention, the 1st respondent examined herself as P.W.1 and deposed to that effect and marked F.I.R. as Ex.P1. The appellant did not specifically deny the manner of accident and involvement of the two wheeler. On the other hand, it is the contention of the appellant that at the time of accident, one Ganesh was riding the motorcycle and he did not possess driving licence. He was charge sheeted and convicted for not possessing driving licence. The Tribunal considering the above materials and evidence of 1st respondent as P.W.1, held that the accident occurred only due to rash and negligent riding of the rider by the motorcycle belonging to the 2nd respondent. The Tribunal considering the fact that the rider of the motorcycle did not possess driving licence, ordered pay and recovery. It is well settled that for not possessing driving license, the Insurance Company cannot be exonerated. The 1st respondent who is the third party is entitled to get compensation. Hence, there is no error in the said award of the Tribunal, warranting interference by this Court.

12. As far as the quantum of compensation is concerned, it is the contention of the 1st respondent that she suffered head injury and other grievous injuries and could not do any work as she was doing earlier. To substantiate the said contention, she examined P.W.2/Doctor who deposed about the nature of injuries, treatment taken and certified that the 1st respondent suffered 30% disability. P.W.2/Doctor also deposed that due to head injury, the 1st respondent is getting giddiness and her memory power has been reduced. The Tribunal considering the nature of injuries, disabilities and evidence of P.W.2/Doctor, adopted multiplier method for granting compensation towards loss of earning capacity. The same is in order. The Tribunal in addition

to the amounts granted for loss of earning capacity, granted a sum of Rs.10,000/- towards partial and permanent disability. The Tribunal has not awarded any amount towards loss of amenities, attendant charges and loss of cloth and has awarded meagre amounts under other heads. In view of the same, the sum of Rs.10,000/- granted towards partial and permanent disability is not interfered with. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

13. For the above reasons, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,50,500/- together with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the compensation 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, to the credit of M.C.O.P. No. 249 of 2008. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

maya/gsa
To

1. The Additional District Judge
Motor Accident Claims Tribunal
Krishnagiri.

2. The Section Officer,
V.R Section,
High Court, Madras.

C.M.A. No. 1478 of 2013

VBA (CO)
SP(02/12/2020)