

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2119 of 2011

The Oriental Insurance Company Ltd.,
Rep., by its Divisional Manager,
No.1, katpadi Road, Vellore-4 Appellant/2nd Respondent

Vs.

1.P.Kumar1st Respondent/Claimant

2.T.Velmurugan2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2011 made in M.C.O.P.No.51 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore.

For Appellant : Mr.R.Sivakumar

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 09.03.2011 made in M.C.O.P.No.51 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.51 of 2007 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore. The 1st respondent 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 01.10.2006.

3. The case of the claimant is that on 01.10.2006 at about 08.00A.M., the claimant was riding TVS 50 bearing Regn.No.TN-05-

B-7979 and proceeding from Vellore to Visharam Bypass Road, near Punsalai Nagar, Suriya Hotel, west of Arcot Town Police Station limit in normal speed with utmost caution on the left side of the road by following traffic rules. At that time, a Hero Honda Two Wheeler bearing Regn.No.TN-23-AX-7942, which came from the opposite direction, driven by one T.Srinivasan, in a very rash and negligent manner without following the traffic rules, hit against the first respondent. Due to the said incident the first respondent/claimant sustained greivous injuries.

4. According to the 1st respondent, the accident had happened due to the rash and negligent manner of the second respondent. Therefore, the 1st respondent has filed the above claim petition claiming compensation as against the appellant and the 2nd respondent.

5. Learned counsel for the appellant would submit that the Tribunal has erred in coming to the conclusion that the accident has occurred due to rash and negligent riding of the rider of the motor cycle bearing Regn.No.TN-23-AX-7942 belonging to the second respondent herein and insured with the appellant, inspite of the fact that the same has occurred only due to the negligence on the part of the first respondent/ rider of TVS 50. The accident had occurred only due to the negligence on the part of the first respondent herein and therefore, he is not entitled to claim any compensation from the appellant herein. The Tribunal ought to have directed the second respondent/insured to pay the entire compensation to the first respondent herein. The Court below has failed to note that the rider of the motor-cycle insured with the appellant, was a minor as per FIR/Exhibit P1 and he has no driving license on the date of accident. The Court below has failed to note that the insurance company examined R.W.1 and marked Investigation Report and Insurance Policy as Exhibits R1 and R2, and proved that the rider of the motor cycle had no driving license on the date of accident. The Tribunal failed to note that the insured violated the terms and conditions of the policy in allowing the minor person to ride the motor-cycle without the driving license. Therefore, the insurance company is not liable to indemnify the insured. The Tribunal ought to have followed the judgment reported in 2008 ACJ 1307 and exonerated the insurance company from liability and awarded a sum of Rs.50,000/-. Hence, the learned counsel for the appellant prays to allow the appeal.

6. Today, when the matter is taken up for hearing there is no representation on behalf of the respondents. Even though, notice was served on them and their names being printed in the cause list. Heard the learned counsel for the appellant and perused the materials available on record.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Dr.R.Shanmugasundaram was examined as P.W.2 and marked nine documents as Exs.P1 to P9. On the side of the appellant/Insurance Company, one Bhuvaneshwaran was examined as R.W.1 and marked two documents as Ex.R1 and Ex.R2.

8.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the Hero Honda belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the Hero Honda bike to pay a sum of Rs.50,000/- as compensation to the 1st respondent.

9.It is the contention of the 1st respondent that on the date of accident i.e., on 01.10.2006, due to rash and negligent driving by the driver of the vehicle belonging to the 2nd respondent, the accident had happened. According to the 1st respondent, the accident has occurred due to negligent driving by the rider of the Hero Honda bike. To substantiate the said contention, the 1st respondent examined himself as PW1 and deposed to that effect and marked Ex.P1/FIR, which is registered against 2nd respondent. On the other hand, it is the contention of the appellant, at the time of accident, the second respondent had no driving license and therefore, the appellant is not liable to pay compensation.

10. It is seen from the evidence that the claimant was earning a sum of Rs.5,000/- by doing vessel selling business. Considering the nature of the job, the Tribunal has awarded a sum of Rs.5,000/- towards "Loss of income". The Doctor/P.W.2 assessed the disability as 35%, the Tribunal has reduced the same to 30% and awarded a sum of Rs.30,000/- towards "disability". The Tribunal has awarded a sum of Rs.2,500/- each towards "Transportation" and "Nutrition" and Rs.5,000/- each towards "Medical expenses" and "pain and sufferings". The compensation amount awarded by the Tribunal is just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	30,000/-	30,000/-	confirmed
2.	Loss of income	5,000/-	5,000/-	confirmed

3.	Pain and sufferings	5,000/-	5,000/-	confirmed
4.	Medical Expenses	5,000/-	5,000/-	confirmed
5.	Transportation	2,500/-	2,500/-	confirmed
	Total	Rs.50,000/-	Rs.50,000/-	confirmed

11. The appellant insurance company is directed to deposit the award amount along with interest and costs, within a period of six weeks and recover the same from the owner of the vehicle.

12. With the above observations, the Civil Miscellaneous Appeal is disposed of. The compensation of Rs.50,000/- awarded by the Tribunal is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount 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 at the first instance and then recover the same from the 2nd respondent/owner of the vehicle. 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. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.R.Sivakumar, Advocate SR.No.13660

C.M.A.No.2119 of 2011

NR(CO)
GMY(12/05/2021)