IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CIVIL MISCELLANEOUS APPEAL NO.3214 OF 2011

Piyaribi ... Appellant/Petitioner

.vs.

1. M.Rajalakshmi

2. The Branch Manager,
National Insurance company Ltd.,
Branch Office,
Post Box.No.10, Anuradha Complex,
3rd Frloor, Bankgalore Road,
Krishnagiri Town and District.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 28.01.2011 made in M.C.O.P.No.394 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondent-2 : Mrs.N.B.Surekha

For Respondent-1 : Not Ready Notice

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal, Krishnagiri, in M.C.O.P.No.394 of 2007 awarding compensation of Rs.58,500/-, the claimant has preferred this appeal to enhance the compensation.

2.Brief facts which are necessary for disposal of this appeal are as follows:-

On 10.10.2005 at about 8.30 a.m, the appellant/claimant was walking from South side of the Barugur to Mallapadi road, opposite to travelers bungalow, a Hero Honda Motor cycle bearing registration No.TN-23-AY-0545 belonging to the first respondent which came from behind, driven in a rash and negligent manner and hit the claimant, due to which, the claimant had fallen down and sustained injuries. At the time of accident, the claimant was aged 65 years. Alleging that the accident was due to negligent driving of motorcyclist, claimant has filed Petition under Section 166 of M.V.Act claiming compensation of Rs.3,00,000/-.

3.Denying the manner of accident, the Insurance Company has filed counter affidavit stating that the accident was due to carelessness of claimant/injured when he was walking on the road. The Insurance Company had also taken the plea that the rider of motorcycle was not having a valid driving licence at the time of accident and disputed its liability on the ground of violation of policy conditions. The Insurance Company also disputed the age, income and permanent disability allegedly suffered by the claimant.

4.Before the Tribunal, P.Ws. 1 and 2 were examined. Exs.P-1 to P-6 were marked. RW.1/ Administrative officer of the Insurance Company was examined.

5. Before the Tribunal the injured was examined as P.W.1 and he deposed that the rider of the two wheeler without sounding horn and at an uncontrollable speed came and dashed him. Ex.P.1/F.I.R in Cr.No.354/2005 was registered under Section 279, 337 of IPC of Bargur Police and P.W'1s evidence is strengthened by recitals in Ex.P.1/F.I.R. Upon consideration of oral and documentary evidence, the Tribunal has held that the accident was due to rash and negligent driving of the rider of motorcycle and held that as the driver of the offending vehicle does not posses valid driving licence at the time of accident, the owner of motorcycle is liable to pay the compensation.

6.With regard to quantum fixing the income of the claimant at Rs.4,500/- p.m., and due to the accident he was not able to go for job for atleast 3 months. Hence, Rs,13,500/- is awarded towards loss of income. P.W.2/Doctor assessed the disability of the injured at 25% and the same is taken by the Tribunal and determined Rs.1,000/- per percentage, and awarded Rs.25,000/- towards disability. Apart from this Rs.15,000/- is awarded towards pain and suffering and Rs.5,000/- is awarded towards Transport, expenses on attenders and extra nourishment. Thus, the Total compensation of Rs.58,500/- was awarded.

7.The learned Counsel for the appellant has submitted that the Insurance Company is liable to pay the compensation. It was further submitted that in any event, as against third party claim, the Insurance Company is to be directed to pay the compensation and thereafter, to recover the same from the insured.

8.The learned Counsel for the second respondent/Insurance Company has submitted that at the time of accident, driver of motorcycle did not have valid driving licence. It was further argued that to discharge the burden cast upon the Insurance Company, it has examined R.W.1 who is the Administrative Officer of the Insurance Company and the Tribunal ought to have accepted the defence plea and exonerated the Insurance Company from liability. Insofar as quantum the quantum is concerned, the learned Counsel for the Appellant submitted that in the absence of acceptable evidence to prove permanent disability, the Tribunal has erroneously awarded higher compensation of Rs.58,500/- and the same is unsustainable.

9.Despite the plea taken by the Insurance Company that rider did not have valid driving licence at the time of accident that the first respondent owner had not chosen to produce the valid driving licence of the rider of the two wheeler. To discharge its burden cast upon Insurance Company they had sent a notice to the owner of the offending vehicle to produce the driving licence. As per Ex.R.2 and 3, though the 1st respondent and the rider of the two wheeler received the lawyer's notice, they were not cared to produce the driving licence. Driving licence was also not produced at the time of inspection of vehicle by Motor Vehicle Inspector as per M.V.I report. Hence, it is proved that at the time of accident the rider of the 1st respondent's vehicle, who drove the two wheeler was not having any valid driving license.

10. It is amply made clear that the Insurance Company had established that the rider of the two wheeler had no valid driving licence at the time of accident. Since there was violation of policy conditions, Insurance Company cannot be made liable to pay the compensation, but to compensate the victim pay and recovery is ordered.

11.In the result, the Appeal is partly allowed by directing the Second Respondent/Insurance Company to deposit the compensation amount awarded by the Tribunal together with interest, if not already deposited, to the credit of the concerned M.C.O.P.No, within a period of eight weeks from the date of receipt of a copy of this Judgment and recover the amount deposited from the owner of the vehicle, M.Rajalakshmi (insured) in accordance with law in the same proceedings.

12. On such deposit being made, the claimant is permitted to withdraw the compensation amount together with the accrued interest lying to the credit of the MCOP by filing appropriate application before the Tribunal. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smn

To

The Motor Accident Claims Tribunal/
Chief Judicial Magistrate,
Krishnagiri.

+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.11736
+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No.13320

C.M.A.No.3214 of 2011

MR(CO)
CS/23/11/2020