

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.01.2020
CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2505 of 2012
and
MP.No.1 of 2012

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites road,
Chennai - 600 014.

... Appellant/2nd Respondent
vs.
1.D.Gunasekaran ...1st Respondent/ Petitioner
2.S.Sivakumar ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 03.12.2011 in M.C.O.P.No.27 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Cheyyar at Thiruvannamalai.

For Appellant : Mr.E.Rajadurai
for Mr.M.B.Gopalan

For Respondents : Served-name printed-No appearance

J U D G M E N T

The Royal Sundaram Alliance Insurance Company, the second respondent in MCOP.No.27 of 2005 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Cheyyar at Thiruvannamalai has filed the present appeal.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 03.08.2004.

3. The case of the first respondent / claimant is that on 03.08.2004, at about 09.00 am, he was travelling in a motorcycle bearing Registration No.TN 21 E 9644 as a pillion rider near Soundari Theatre on Cheyyar - Kancheepuram road. At that time, the rider of the said motorcycle rode the vehicle rashly and negligently and caused the accident. Both the first respondent / claimant and the rider the motorcycle

were injured. Therefore, the first respondent / claimant filed the claim petition seeking compensation for the injuries sustained by him.

4. Before the Tribunal, on the side of the first respondent / claimant, PW1 and PW2 were examined and Exs.P1 to P10 were marked. On the side of the respondents therein, RW1 and RW2 were examined and Exs.R1 to R4 were marked.

5. The second respondent herein remained absent before the Tribunal and therefore, he was set exparte. The Royal Sundaram Alliance Insurance Company contested the claim petition. The learned Subordinate Judge / Motor Accident Claims Tribunal, Cheyyar at Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.73,300/- together with interest at the rate of 7.5% per annum to the first respondent / claimant and directed the Insurance Company to pay the same.

6. Challenging the said award dated 03.12.2011 made in M.C.O.P.No.27 of 2005, the appellant / Insurance Company has come out with the present appeal.

7. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal erred in holding that the appellant is liable to pay compensation to the owner of the vehicle. He submitted that the first respondent / claimant is the owner of the motorcycle bearing Registration No.TN 21 E 9644. He further contended that the Tribunal failed to appreciate that the Policy covers owner's liability to third parties and occupants, but not for such injuries sustained by the owner. The Tribunal has misunderstood the coverage for pillion rider, without appreciating that it was also only by way of indemnifying the owner and not for injuries suffered by the owner himself. He therefore prayed for setting aside the orders passed by the Tribunal.

8. No appearance on behalf of the respondents. The names of the respondents are printed in the cause list, hence, this Court is inclined to take up the matter for final disposal.

9. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials on record, available before this Court.

10. From the materials available on record, it is seen that on 03.08.2004, at about 09.00 am, the first respondent / claimant, namely, Gunasekaran was travelling in a motorcycle bearing Registration No.TN 21 E 9644 as a pillion rider, while, his brother-in-law, namely, Sivakumar (second respondent herein) was riding the said motorcycle. In the claim petition, it is stated that Sivakumar (second respondent

herein) is the owner of the said motorcycle. However, a perusal of a copy of the RC book (Ex.P7) and Insurance Policy (Ex.P8) shows that they both stand in the name of the first respondent / claimant, namely, Gunasekaran. Even according to the Motor Vehicles Inspector's report (Ex.R4), the said motorcycle belonged to the first respondent / claimant. From the above facts, it is clear that the motorcycle is owned by the first respondent / claimant himself. It is also not disputed that the accident occurred due the rash and negligent riding of the rider of the said motorcycle ie., Sivakumar. From the Insurance Policy it is seen that,

"Driver: Any person including insured;

Provided that a person driving holds an effective Driving Licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that the person holding an effective Learner's Licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989."

It is also seen that,

"PA cover for owner - driver under Section III (CSI) - Rs.1,00,000/-"

From the above facts, it is seen that the first respondent / claimant, as a owner is entitled to get compensation upto Rs.1,00,000/-. The award passed by the Tribunal is Rs.73,300/-, which is clearly below Rs.1,00,000/- Therefore, this Court does not find any valid reason to set aside the orders passed by the Tribunal.

11. The order passed by the learned Subordinate Judge, Cheyyar at Thiruvannamalai in MCOP.No.27 of 2005 dated 03.12.2011 is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Cheyyar at Thiruvannamalai.

Copy to: The Section Officer, VR Section, High Court, Madras.
+lcc to Mr.M.B.Gopalan, Advocate SR.No. 7344

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