

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.2546 & 2585 of 2012
and M.P.Nos. 1 & 1 of 2012

The Divisional Manager,
M/s. National Insurance Company Ltd.,
J.N. Street, Puducherry.

.. Appellant in
both the appeals

Vs.

1.Pakkiri

.. 1st Respondent in
C.M.A.No.2546/2012

1.Sakthivelu

.. 1st Respondent in
C.M.A.No.2585/2012

2.Vatcharavelu

.. 2nd Respondent in
both the appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 03.12.2010, made in M.C.O.P. Nos.170 & 169 of 2003, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Pondicherry.

(In both appeals)

For Appellant : Mr. D. Bhaskaran

For Respondents: Mr. T. Ananthasekar (For R1)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

These appeals have been filed against the common judgment and decree dated 03.12.2010, made in M.C.O.P. Nos.170 & 169 of 2003, on the file of the III Additional District Court, (Motor Accident Claims Tribunal), Pondicherry.

2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellant in both the appeals is the 2nd respondent-Insurance Company in M.C.O.P. Nos.170 & 169 of 2003, on the file

of the III Additional District Court, (Motor Accident Claims Tribunal), Pondicherry. The 1st respondent in both the appeals filed the said claim petitions, claiming a sum of Rs.2,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 04.09.2002.

4. According to the 1st respondent in both the appeals, on the date of accident, when the 1st respondent in C.M.A.No.2585 of 2012 was riding his Bicycle at Villianur Main Road, near Nanbargal Nagar, Oulgaret, along with the 1st respondent in C.M.A.No.2546 of 2012 as pillion rider, rider of a Motorcycle bearing Registration No. TN-20-V-1887 belonging to the 2nd respondent drove the same in a rash and negligent manner and dashed against the Bicycle in which the 1st respondent in both the appeals traveled and caused the accident. In the accident, the 1st respondent in both the appeals sustained grievous injuries and thus, filed the claim petitions, claiming compensation against the appellant as insurer and 2nd respondent, as owner of the offending vehicle.

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

6. The appellant-Insurance Company filed separate counter statements and denied all the averments made by the 1st respondent in their respective claim petitions. According to the appellant-Insurance Company, the Motorcycle was falsely implicated and 1st respondent in both the appeals have not sustained any injuries in the accident involving the said vehicle. The 1st respondent in both the appeals have to prove that the rider of the Motorcycle possessed valid driving license along with vehicular records. In any event, the 1st respondent in both the appeals have to prove their age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of both the claim petitions.

7. Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1, P.W.2 respectively, examined Dr.R.V. Krishnakumar as P.W.3 and marked 13 documents as Exs.A1 to A13. The appellant examined Dr.T.Kumaravel as R.W.1 and marked 3 documents as Exs.R1 to R3.

8. 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 as insurer of the said vehicle to pay a sum of Rs.79,750/- and Rs.20,000/- as compensation to the 1st respondent in both the appeals respectively.

9. Against the said common award dated 03.12.2010, made in M.C.O.P. Nos.170 & 169 of 2003, the appellant-Insurance Company has come out with the present appeals.

10. The learned counsel appearing for the appellant-Insurance Company contended that the Motorcycle bearing Registration No. TN-20-V-1887 belonging to the 2nd respondent and insured with the appellant was not involved in the accident. The said vehicle was falsely implicated for the purpose of claiming compensation. The appellant examined R.W.1 and filed Exs.R1 to R3 to show that the vehicle involved is only bearing Registration No. TN-09-E-6678. The Tribunal failed to adjudicate the issue that the 2nd respondent's vehicle bearing Registration No. TN-20-V-1887 was not involved in the accident inspite of the counter filed by the appellant denying the involvement of the vehicle bearing Registration No. TN-20-V-1887, insured with the appellant. The said erroneous finding is liable to be set aside and prayed for allowing the appeal.

11. The learned counsel appearing for the 1st respondent in both the appeals made averments in support of the award of the Tribunal and prayed for dismissal of the appeals.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent in both the appeals and perused the materials available on record.

13. It is the contention of the 1st respondent in both the appeals that while they were travelling in a Bicycle, the rider of the Motorcycle bearing Registration No. TN-20-V-1887, belonging to the 2nd respondent, drove the same in a rash and negligent manner and dashed on the backside of the Bicycle and caused the accident. To substantiate the said contention, the 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2, examined Doctor as P.W.2 and marked FIR as Ex.A1, which was registered against the rider of the Motorcycle bearing Registration No. TN-20-V-1887. On the other hand, it is the contention of the appellant that the Motorcycle bearing Registration No. TN-20-V-1887 belonging to the 2nd respondent was not involved in the accident and in Ex.A8 - wound certificate and Ex.A2 - accident register, it has been mentioned that the vehicle involved in the accident is bearing Registration No. TN-09-E-6678. The appellant examined R.W.1-Dr.T.Kumaravel from the Hospital who issued wound certificate, marked as Ex.A8 and marked Exs.R1 to R3. R.W.1 is not the author of the said document. He had given evidence on behalf of Dr.Kanmanidevi. The appellant has not given any reason for not examining Dr.Kanmanidevi and not examining the driver of the Motorcycle bearing Registration No. TN-20-V-1887, insured with the appellant, or any independent witness to substantiate their

contention. The appellant failed to prove their contention made in the counter statements by letting in any acceptable evidence. Further, there is nothing on record to show the person who has given information about the offending vehicle based on which entries are made in the wound certificate and accident register. As far as the delay in lodging the complaint is concerned, the 1st respondent has taken treatment after the accident. In view of the same, the 4 days delay in lodging the complaint is not fatal to the claim of the 1st respondent in both the appeals. Hence, I do not find any error in the common award of the Tribunal warranting interference by this Court.

14. In the result, both the appeals are dismissed and the amounts awarded by the Tribunal at Rs.79,750/- and Rs.20,000/- respectively along with interest and costs are confirmed. The appellant-Insurance Company is directed to deposit the award amount, 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. Nos.170 & 169 of 2003. On such deposit, the 1st respondent in both the appeals are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

The III Additional District Judge,
(Motor Accident Claims Tribunal),
Pondicherry.

Copy to

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

+1cc to Mr.T.Ananthasekar, Advocate, S.R.No.39094

C.M.A. Nos.2546 & 2585 of 2012
and M.P.Nos. 1 & 1 of 2012

SRA(CO)
KM(22/04/2021)