

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2634 of 2015

V.M.Ganesamurthy

...Appellant/Petitioner

versus

1.S.R.Venkatachalapathy

2.National Insurance Co.Ltd.,
Branch Office: No.1,
Govindasamy Pillai Street,
Near Old Bus Stand,
Salem-636 001.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order dated 10.12.2014 in M.C.O.P.No.144 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Attur.

For Appellant : Ms.Ramya V.Rao

For Respondents: Ex-parte for R1

: Mr.S.Arunkumar for R2

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed against the fair and decretal order dated 10.12.2014 made in M.C.O.P.No.144 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Attur.

2. The brief facts of the case is that on 19.03.2005, the claimant, who was 14 years old at the time of accident, while riding the moped bearing Registration No.TN-27-X-7651 along Attur-Salem main Road, the passenger bus bearing Registration No.TN-34-T-1515 dashed against his moped, in which, the claimant sustained fracture injury and was admitted as inpatient in Chellappa Hospital, Salem. He got discharged on 07.04.2005, after surgery for his injury. Nearly three years after the accident, the claim petition was filed before the Tribunal, seeking compensation of Rs.8,00,000/-.

3. The Tribunal, after considering the evidence let in by the claimant, has found that the claimant, who completed just 14 years at the time of accident, without licence has driven the motor cycle. Having violated the Motor Vehicles Act as well as the policy condition, held the claimant not entitled for compensation, the claim petition was dismissed.

4. Aggrieved by the said dismissal order, the present appeal is filed on the ground that the accident occurred due to the fault of the bus driver and he had pleaded guilty before the criminal court in C.C.No.457 of 2006. While so, the Tribunal ought to have paid compensation as claimed instead of dismissing the petition.

5. The learned counsel appearing for the appellant would submit that there are catena of judgments saying that even in case of driving without licence compensation cannot be deprived, only a portion can be reduced for the contributory negligence. Further, he would submit that the claimant had incurred nearly Rs.96,000/- towards medical expenses and also lost his future due to the injury he sustained over his left hand, left shoulder, chest bone damaging his lungs.

6. The learned counsel appearing for the Insurance Company would submit that admittedly the claimant met with an accident while driving a two wheeler, at the age of 14. This ipso facto proves that he has voluntarily invited the accident by driving a moped without licence when he was not even eligible to drive a motor vehicle. Under law not eligible to get a licence. In the said circumstances, if any compensation is paid, it will be a premium for gross violation of law and encouragement to the kids, driving two wheeler on a road without license causing menace to the other road users. This Court totally in agreement with the finding of the Tribunal dismissing the claim petition and also the reasoning substantiated by the learned counsel for the 2nd respondent.

7. The claimant has no locus for claiming compensation, when he had violated the Motor Vehicles Act. On the basis of humanitarian ground having noticed that the young kid due to improper supervision of his parents, had gone to road with two wheeler and sustained injury, a sum of Rs.1,50,000/- as a consolidated compensation is awarded to the claimant and the same has to be paid by the insurer of the bus, who is 2nd respondent herein. The said amount shall be deposited in M.C.O.P.No.144 of 2008 within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall withdraw the same on appropriate petition. Any delay after eight weeks from the date of the receipt of the order, will carry interest at the rate of 7.5% per annum.

8. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal/Subordinate Judge,
Subordinate Court,
Attur.

2.National Insurance Co.Ltd.,
Branch Office: No.1,
Govindasamy Pillai Street,
Near Old Bus Stand,
Salem-636 001.

+1cc to Mr.S.Arunkumar, Advocate, sr no.37441

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NJRK (CO)

RMP (11/05/2021)



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