

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2336 of 2013

Ramu

.. Appellant/ Petitioner

Vs.

1.Selvakumar

(R1 remained exparte before the Tribunal)

2.ICICI Lombard Motor Insurance Company Ltd.

Chennai.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2012 made in M.C.O.P.No.701 of 2009 on the file of Motor Accident Claims Tribunal, Fast Track Court No.II, Poonamallee.

For Appellant : Mr.N.M.Elumalai

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the portion of the award exonerating the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 19.01.2012 made in M.C.O.P.No.701 of 2009 on the file of Motor Accident Claims Tribunal, Fast Track Court No.II, Poonamallee.

2.The appellant is the claimant in M.C.O.P.No.701 of 2009 on the file of Motor Accident Claims Tribunal, Fast Track Court No.II, Poonamallee. He 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 19.09.2009.

3.According to the appellant, on the date of accident i.e.,

on 19.09.2009 at about 11.30 a.m., while he was riding in his motorcycle from Mogappair West 3rd main road block towards West to East and was again turning to 6th block main road, Hero Honda Splendor motorcycle bearing Registration No.TN-50D 5647 was driven by the 1st respondent in a rash and negligent manner, hit against the motorcycle driven by the appellant and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and hence, the appellant filed the above said claim petition claiming compensation against the respondents.

4.The 1st respondent, owner-cum-rider of Hero Honda Splendor motorcycle, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company being insurer of Hero Honda Splendor motorcycle, filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to rash and negligent riding of the motorcycle by the appellant. The offending motorcycle was not insured with this respondent and the 1st respondent did not possess valid driving license at the time of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. The 2nd respondent has also denied the age, avocation, income and nature of injuries suffered by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Subramaniam was examined as P.W.2 and marked eight documents as Exs.P1 to P8. On the side of the 2nd respondent/Insurance Company, Ms.Deepika and Mr.Karthikeyan, Law Officers of the 2nd respondent/Insurance Company were examined as R.W.1 and R.W.2 and marked three documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, owner-cum-rider of Hero Honda Splendor motorcycle and directed the 1st respondent to pay a sum of Rs.1,68,387/- as compensation to the appellant and exonerated the 2nd respondent/Insurance Company from its liability.

8. Challenging the portion of the award exonerating the 2nd respondent/Insurance Company from its liability as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

9.Though the learned counsel appearing for the appellant has raised various grounds in the grounds of appeal with regard to quantum of compensation, at the time of hearing the appeal, he has restricted his arguments only with regard to portion of the award exonerating the 2nd respondent/Insurance Company from

its liability.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in exonerating the 2nd respondent/Insurance Company from its liability on the ground that the appellant failed to produce the original insurance policy issued by the 2nd respondent. The appellant has marked xerox copy of the policy as Ex.P8 and it is usual procedure to mark the xerox copies of the documents like driving license, insurance policy and Registration Certificate available from the Police officials and prayed for setting aside the portion of the award exonerating the 2nd respondent/Insurance Company from its liability and for a direction to the 2nd respondent to pay the compensation to the appellant.

11.Learned counsel appearing for the 2nd respondent/Insurance Company contended that the 1st respondent took the insurance policy from the 2nd respondent only for the period from 03.11.2007 to 02.11.2008. Ex.P8/copy of insurance policy produced by the appellant for the period from 03.11.2008 to 02.11.2009 was not issued by the 2nd respondent. The 2nd respondent examined two Law Officers as R.W.1 & R.W.2, marked Ex.R1/policy issued by the 2nd respondent for the period from 03.11.2007 to 02.11.2008, Ex.R2/policy search report and Ex.R3/returned cover. The Tribunal considering the evidence of R.W.1 & R.W.2 and the documents filed by the 2nd respondent/Insurance Company, rightly exonerated the 2nd respondent/Insurance Company from its liability. There is no error in the said finding of the Tribunal warranting interference by this Court and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.It is the contention of the appellant that the accident has occurred due to rash and negligent riding of the motorcycle by the 1st respondent. The motorcycle belonging to the 1st respondent was insured with the 2nd respondent/Insurance Company and the insurance policy was in force at the time of accident. To substantiate the said contention, the appellant has produced Ex.P8/xerox copy of the insurance policy. On the other hand, it is the contention of the 2nd respondent/Insurance Company that no policy was in force for the offending motorcycle at the time of accident and the policy taken by the 1st respondent for the offending vehicle was only from 03.11.2007 to 02.11.2008. The 2nd respondent examined R.W.1 & R.W.2, their officials and marked Exs.R1/copy of insurance policy and R2/policy search report, to show that no policy was issued for the period, when the accident

has occurred. The 2nd respondent/Insurance Company in the counter statement has stated that the appellant has to prove that the insurance policy for the offending vehicle was in force at the time of accident. When the existence of the insurance policy was denied by the 2nd respondent, the appellant ought to have examined the Police official, who has furnished Ex.P8 to the appellant. Further, the appellant has not produced the Motor Vehicle Inspector's Report to prove that whether the insurance policy was produced before the Motor Vehicle Inspector or not at the time of investigation. Considering all the above materials, this Court is of the view that there is no error in the finding of the Tribunal that no policy was in force at the time of accident for the offending vehicle and exonerating the 2nd respondent/Insurance Company from its liability.

14. For the above reason, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,68,387/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed. The 1st respondent is directed to deposit the entire 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. On such deposit, the appellant is permitted to withdraw the entire award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kj
To
The II Judge
Motor Accident Claims Tribunal
Fast Track Court, Poonamallee.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.R.Sree vidhya , Advocate SR.No. 20289

+1cc to Mr.N.M.Elumalai , Advocate SR.No. 19551

C.M.A.No.2336 of 2013

A.SK(15.03.2021)