

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2758 of 2013

Saravanakannan

.. Appellant/Petitioner

Vs.

1. M.Nagarajan

2. M.Premkumar

3. T.V.S. Finance & Service Limited,
Jayalakshmi Estate,
Represented by its Manager,
No.24, Haddows Road,
Chennai - 600 006.

4. H.D.F.C. Chubb,
General Insurance Company Limited,
Represented by its Legal Manager (Claims),
Raheja Towers Testa 4,
No.117, Anna Salai, Chennai - 600 002.

5. V.K.Santhose Kumar .. Respondents/ Respondents

(Claim against R3 is dismissed before
the Tribunal. Hence, notice to R3
dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.07.2011 made in M.C.O.P.No.95 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R4 : Mr.E.Rajadurai
for M/s.M.B.Gopalan

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 29.07.2011 made in M.C.O.P.No.95 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam.

3.The appellant is the claimant in M.C.O.P.No.95 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam. He filed the said claim petition, claiming a sum of Rs.13,84,000/- as compensation for the injuries sustained by him in the accident that took place on 17.10.2004.

4.According to the appellant, on 17.10.2004 at about 07.00 P.M., while he was riding a TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 belonging to the 2nd respondent on Gobi - Erode main road from West to East on his extreme left side, near Siva Studio at Veerapandi Village, the 1st respondent who was riding the TVS 50 moped bearing Registration No.TN 38 E 9697 belonging to 5th respondent in a rash and negligent manner from North to South, under the influence of alcohol, came and dashed against the appellant and caused the accident. In the accident, the appellant sustained multiple grievous injuries and he was admitted in the Government Hospital, Gobi as in-patient. Thereafter, he was admitted in KG Hospital, Coimbatore as in-patient for one month. Further, the appellant is taking treatment as out-patient at KG Hospital, Coimbatore and at KKS Hospital, Gobi. Therefore, the appellant filed the said claim petition claiming a sum of Rs.13,84,000/- as compensation against the respondents.

5.The respondents 2 and 5 being the owner of the TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 and TVS 50 moped bearing Registration No.TN 38 E 9697 respectively remained exparte before the Tribunal.

6.The 1st respondent, being the rider of the TVS 50 moped bearing Registration No.TN 38 E 9697 filed counter statement and denied all the averments made by the appellant. According to the 1st respondent, originally the appellant drove a TVS 50 motorcycle after consuming alcohol along with one Karthikeyan as pillion rider on Gobi - Erode main road from West to East and dashed against the TVS 50 moped which was ridden by the 1st respondent and invited the accident. The appellant has to prove that immediately after the accident, the appellant's friend one Shanmugam gave information to the Gobi Fire Service Department

about the accident and Fire Station vehicle took the appellant and the 1st respondent to the Government Hospital, Gobichettipalayam. The 1st respondent denies the statement that appellant's friend viz., Shanmugam, initially has given complaint to the Police but the same was not registered by the Police and the Police registered the statement given by the 1st respondent. The appellant has to prove his age, avocation, income, nature of injuries sustained, disability and period of treatment taken by him by producing valid documents. In any event, the quantum of compensation claimed by the appellant is exorbitant and prayed for dismissal of the claim petition as against the 1st respondent.

7.The 3rd respondent being the owner of the TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 filed counter statement and denied various averments made by the appellant. According to the 3rd respondent, the accident has occurred only due to negligence on the part of the appellant but the Police has registered a case in F.I.R.No.752 of 2004 against the 1st respondent. The appellant has to prove his age, avocation, income, nature of injuries sustained, disability, period of treatment taken by him and the medical bills by producing valid documents. The quantum of compensation claimed by the appellant is extremely high and prayed for dismissal of the claim petition as against the 3rd respondent.

8.The 4th respondent-Insurance Company, being the insurer of both the TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 and TVS 50 moped bearing Registration No.TN 38 E 9697 filed counter statement and denied the entire averments made by the appellant. According to the 4th respondent, the accident has occurred only due to negligence on the part of the appellant. The appellant only drove the TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 along with one Karthikeyan as a pillion rider in a rash and negligent manner from West to East in a drunken mood and dashed against the TVS 50 moped bearing Registration No.TN 38 E 9697 driven by the 1st respondent. The appellant as well as the 1st respondent were not possessing valid driving license at the time of accident. Therefore, the 4th respondent is not liable to pay any compensation. F.I.R. was registered against the appellant in Crime No.752 of 2004 by the Gobi Police Station on the ground that accident has occurred due to negligence on the part of the appellant and also the appellant was under the influence of alcohol at the time of accident. The TVS 50 moped bearing Registration No.TN 38 E 9697 belonging to the 5th respondent was not possessing valid insurance policy at the time of accident. The appellant has to prove his age, avocation, income, nature of injuries, disability, period of treatment taken by him and the medical bills by producing valid documents. The quantum of compensation

claimed by the appellant is extremely high and prayed for dismissal of the claim petition as against the 4th respondent.

9. The 4th respondent-Insurance Company filed additional counter statement and contended that the insurance policy issued to TVS Suzuki motorcycle bearing Registration No. TN 36 F 9958 covers the risk of 3rd party injuries and damage of the vehicle and not for the owner or rider of the vehicle. The TVS Suzuki motorcycle bearing Registration No. TN 36 F 9958 stands in the name of the 2nd respondent and the policy also issued in the name of the 2nd respondent. At the time of accident, the appellant only drove the TVS Suzuki motorcycle bearing Registration No. TN 36 F 9958. Therefore, this petition is not maintainable against the 4th respondent. The 4th respondent is liable to indemnify the loss or damage to the above said TVS Suzuki motorcycle bearing Registration No. TN 36 F 9958 and to pay for the injury or death of the third party only and not for the rider of the vehicle. There is no contract between the 4th respondent and the appellant for any loss occurred to him for his personal injury or death. The policy is only with regard to third party and the appellant himself has stated in the claim petition that he is the rider of the vehicle. Hence, he is not entitled for any compensation from the 4th respondent. The appellant is not covered neither under the insurance policy and nor under the M.V. Act. The appellant failed to implead the owner of the TVS 50 moped bearing Registration No. TN 38 E 9697. The 4th respondent is not liable to pay any compensation to the appellant and prayed for dismissal of the claim petition against the 4th respondent-Insurance Company.

10. Before the Tribunal, the appellant examined himself as P.W.1, one V.E. Chandrasekaran was examined as P.W.2 and Doctor A.K. Thambiraj was examined as P.W.3 and 13 documents were marked as Exs. P1 to P13. On behalf of the respondents 1, 3 and 4, the 1st respondent examined himself as R.W.1 and one Kamalkumar was examined as R.W.2 and marked the Insurance Policy as Ex. R1.

11. 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 TVS 50 moped bearing Registration No. TN 38 E 9697 belonging to the 5th respondent and directed the respondents 1 and 5, being the rider and owner of the TVS 50 moped bearing Registration No. TN 38 E 9697 jointly and severally to pay a sum of Rs. 6,95,224/- as compensation to the appellant. The Tribunal dismissed the claim petition against the respondents 2, 3 and 4.

12. Against the said award dated 29.07.2011 made in M.C.O.P.No.95 of 2007 dismissing the claim petition as against

the 4th respondent and for enhancement of compensation, the appellant has come out with the present appeal

13. Though the appellant has raised various grounds in the grounds of appeal with regard to quantum of compensation, at the time of arguments, the learned counsel appearing for the appellant restricted his arguments only with regard to liability. The learned counsel appearing for the appellant contended that the Tribunal erred in exonerating the Insurance Company and awarded meagre amounts as compensation without considering the oral and documentary evidence of the appellant. Though F.I.R. was registered against the appellant and Criminal Court found negligence on the part of the appellant, the Tribunal rightly fixed negligence on the part of the 1st respondent, the rider of the TVS 50 moped bearing Registration No.TN 38 E 9697. Having fixed negligence on the part of the 1st respondent, the Tribunal ought not to have exonerated the 4th respondent-Insurance Company from its liability. The appellant is a third party. Even if there is violation of policy condition, the Tribunal ought to have ordered pay and recovery. The Motor Vehicles Act is a beneficial legislation. Ex.R1/Insurance Policy issued by the 4th respondent is package policy and additional premium was paid to cover personal accident cover risk of owner cum rider of the two wheeler and prayed to set aside the portion of the award exonerating the 4th respondent-Insurance Company.

14. Per contra, Mr.E.Rajadurai, learned counsel representing Mr.M.B.Gopalan, counsel appearing for the 4th respondent-Insurance Company made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

15. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 4th respondent-Insurance Company and perused the entire materials on record.

16. It is the contention of the appellant that while he was riding TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 belonging to the 2nd respondent, the 1st respondent rode the TVS 50 moped bearing Registration No.TN 38 E 9697 belonging to the 5th respondent in a rash and negligent manner and dashed against the TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and has taken treatment as in-patient. On these averments, the appellant filed claim petition against the respondents 1 to 5. The appellant has stated in the claim petition that 4th respondent is the insurer of both the vehicles involved in the accident. The respondents 2 and 5 remained exparte before the Tribunal. The 1st respondent filed counter statement denying various averments

made by the appellant and contended that accident occurred only due to rash and negligent riding by the appellant. The 3rd respondent also filed separate counter statement and denied all the averments and prayed for dismissal of the claim petition as against the 3rd respondent. The 4th respondent in the counter statement stated that TVS 50 moped bearing Registration No.TN 38 E 9697 belonging to the 5th respondent was not insured with them and denied other averments made by the appellant. The 4th respondent-Insurance Company filed additional counter statement stating that TVS Suzuki motorcycle bearing Registration No.TN 36 F 9958 ridden by the appellant belonging to the 2nd respondent was insured only to cover the risk of third party injuries and damage of vehicle and not for the owner or rider of the vehicle.

17.The Tribunal considering the entire materials on record, held that accident has occurred only due to rash and negligent riding by the 1st respondent. The 1st respondent examined himself as R.W.1. 4th respondent examined one Kamalkumar as R.W.2. The Tribunal considering the evidence, contention of the 4th respondent and the averments in the counter statement and evidence of 1st respondent as R.W.1, held that the TVS 50 moped bearing Registration No.TN 38 E 9697 ridden by the 1st respondent was not insured at any point of time with 4th respondent and considering the materials, directed the respondents 1 and 5, who are the rider and owner of the TVS 50 moped bearing Registration No.TN 38 E 9697 to pay the compensation to the appellant and dismissed the claim petition against the respondents 2 to 4.

18.The contention of the learned counsel appearing for the appellant that without properly appreciating the evidence placed before it, the Tribunal exonerated the 4th respondent-Insurance Company is without merits. In the claim petition, the appellant has mentioned the name and address of the 4th respondent-Insurance Company and did not furnish any policy number. Before the Tribunal, the appellant has not filed the policy with regard to TVS 50 moped bearing Registration No.TN 38 E 9697, which was responsible for the accident. Further, the 1st respondent himself admitted in his evidence that he has not insured his vehicle for four years. In view of the above materials, the contention of the learned counsel appearing for the appellant that Tribunal failed to consider the oral and documentary evidence let in by the appellant is contrary to the materials on record and is without merits. The contention of the learned counsel appearing for the appellant that the Tribunal failed to order pay and recovery is also without merits.

19.For the above reasons, the Civil Miscellaneous Appeal is dismissed and sum of Rs.6,95,224/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed. The respondents 1 and 5 are jointly and severally

directed to deposit the amount awarded by the Tribunal 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 to the credit of M.C.O.P.No.95 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam. On such deposit, the appellant is 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. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Gobichettipalayam.

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

NRL(CO)
CSR 27.04.2021

C.M.A.No.2758 of 2013

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