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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.56 of 2012
and
M.P. No.1 of 2012

The New India Assurance Co. Ltd.,
105, Railway Station Road,
Tiruppattur, Vellore District. .. Appellant/2nd Respondent

Vs.

1.P. Suresh ... 1st Respondent/ Petitioner

2.R. Kandasamy .. 2nd Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2011, made in M.C.O.P. No.1605 of 2007, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr. K. Vinod

For Respondents: Mr. P. Mani (For R1)

No appearance (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 28.07.2011, made in M.C.O.P. No.1605 of 2007, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Krishnagiri.

2. The appellant is the 2nd respondent in M.C.O.P. No.1605 of 2007, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.05.2007.

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3. According to the 1st respondent, on the date of accident, when he was traveling as Cleaner in a Lorry bearing Registration No.TMD-6933 belonging to the 2nd respondent in Anumantheertham Pavakkal road which was newly laid, containing jelly stones, the driver of the Lorry drove the same in a rash and negligent manner without minding the hazards of the newly laid road due to which Lorry got capsized and thus, the accident occurred. A water tank set up over the Lorry fell on the 1st respondent who was thrown out of the Lorry. The accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent. In the accident, the 1st respondent suffered multiple and grievous injuries. For the injuries suffered by him, the 1st respondent claimed compensation against the 2nd respondent and appellant, as owner and insurer of the offending vehicle.

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

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred when the driver of the Lorry driving the vehicle cautiously, applied sudden brake and swerved the Lorry to avoid hitting a Cyclist who suddenly crossed the road. The 1st respondent, Cleaner of the Lorry who was sleeping, fell down from the vehicle and sustained injuries. The accident occurred only due to the negligence on the part of the Cyclist. At the time of accident, the driver of the Lorry belonging to the 2nd respondent did not possess valid driving license. For violation of policy conditions, the appellant is not liable to indemnify the 2nd respondent, owner of the vehicle. In any event, the 1st respondent has to prove his age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Doctor as P.W.2 and marked 8 documents as Exs.A1 to A8. The appellant examined the Junior Assistant of R.T.O., Krishnagiri as R.W.1 and and marked M.V.I. report and copy of driving license of the Lorry driver as Exs.B1 & B2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.4,17,400/- as compensation to the 1st respondent.

8.Against the said award dated 28.07.2011, made in M.C.O.P. No.1605 of 2007, the appellant - Insurance Company has come out

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with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding huge amount of Rs.4,17,400/- as compensation, when the Lorry involved in the accident did not have fitness certificate and the driver of the Lorry did not possess valid Driving License at the time of accident. The driver of the Lorry had only driving license to drive Light Motor Vehicle, while he was driving a Lorry, which is a Heavy Motor Vehicle. The Tribunal ought to have exonerated the appellant-Insurance Company for violation of permit and policy conditions by the 2nd respondent, owner of the Lorry. Without prejudice to the above contention, the learned counsel appearing for the appellant further contended that the Tribunal erred in accepting that the alleged injuries sustained by the 1st respondent was due to involvement of the Lorry and erred in accepting the claim of the 1st respondent that due to the injuries sustained in the accident, he suffered disability to an extent of 45% and awarded a sum of Rs.2,75,400/- as compensation towards disability. The Tribunal erred in awarding a sum of Rs.30,000/- towards loss of future earning capacity, apart from awarding a sum of Rs.2,75,400/- towards disability by adopting multiplier method. The amounts granted under different heads are also excessive. The Tribunal failed to see that the 1st respondent suffered injuries while working as Cleaner and hence, he ought to have filed claim petition under the Workmen Compensation Act against the 2nd respondent, owner of the Lorry. The Tribunal ought to have granted compensation by applying formula as per the Workmen Compensation Act and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a Cleaner of Lorry and was earning a sum of Rs.3,500/- per month. Due to the negligence on the part of the driver of the Lorry, the accident has occurred and the 1st respondent was thrown out from the Lorry and water tank kept in the Lorry fell on the 1st respondent. Due to the same, he sustained injuries. The 1st respondent proved that the accident has occurred only due to rash and negligent driving by the driver of the Lorry and there was valid insurance policy issued by the appellant in force at the time of accident. The 1st respondent examined P.W.2 – Doctor and proved the nature of injuries and disability suffered by him. The Tribunal considered all the materials on record placed before it and awarded compensation. The total compensation awarded by the Tribunal is not excessive. The 1st respondent is a third party and for any violation of permit and policy conditions, the Insurance Company cannot be exonerated and prayed for dismissal of the appeal.

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11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

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

13.From the materials on record, it is seen that it is the contention of the 1st respondent that while he was traveling as Cleaner of the Lorry, due to rash and negligent driving by the driver of the Lorry, the accident has occurred. The 1st respondent invoked provisions of the Motor Vehicles Act and claimed compensation. The contention of the learned counsel appearing for the appellant-Insurance Company is that the 1st respondent was an employee of the 2nd respondent and accident has occurred during the course of employment and therefore, the 1st respondent ought to have filed claim petition only under the Workmen Compensation Act. As per Section 167 of the Motor Vehicles Act, the claimant has an option to file claim petition for claiming compensation either under provisions of the Motor Vehicles Act or under provisions of the Workmen Compensation Act and not under both the Acts. In the present case, the 1st respondent has exercised this option and filed claim petition under provisions of the Motor Vehicles Act. Thus, the claim petition filed by the 1st respondent is maintainable.

14.As far as the liability of the appellant is concerned, apart from various grounds raised, the learned counsel appearing for the appellant-Insurance Company contended that offending vehicle belonging to the 2nd respondent did not have fitness certificate and driver of the vehicle did not possess valid driving license and hence, the appellant is not liable to pay compensation. The appellant by examining one Ghouse Sheriff, Junior Assistant of Regional Transport Office, Krishnagiri as R.W.1, marked Driving License of the Lorry driver as Ex.B1 and Motor Vehicle Inspector's report as Ex.B2. From the evidence of R.W.1 and Ex.B1- driving license of the driver, it is seen that the driver of the Lorry possessed driving license only to drive Light Motor Vehicle and did not possess driving license to drive Heavy Motor Vehicle, like Lorry. The driver of the Lorry drove the Lorry without valid license to drive Heavy Motor Vehicle. The Hon'ble Apex Court in the judgment reported in 2020 SCC Online SC 769 [Beli Ram Vs. Rajinder Kumar and another], has held that when the driver of the offending vehicle did not possess driving license or he did not renew the driving license within time limit, or before the date of accident, the Insurance Company is not liable to pay compensation, as owner of the vehicle has committed breach of terms of policy. In view of the ratio in the judgment of the Hon'ble Apex Court referred to

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above, the appellant is not liable to pay compensation to the 1st respondent. Hence, the portion of the award directing the appellant to pay compensation alone is set aside and the compensation awarded by the Tribunal is payable only by the 2nd respondent, owner of the vehicle.

15.In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.4,17,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent, owner of the vehicle is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1605 of 2007. On such deposit, the 1st respondent 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. The appellant-Insurance Company is permitted to withdraw the award amount, lying in the credit of M.C.O.P. No.1605 of 2007, if the entire award amount has already been deposited. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+1cc to Mr.K.Vinod, Advocate, S.R.No. 37338
+1cc to Mr.P.Mani, Advocate, S.R.No. 37577

C.M.A. No.56 of 2012

PVS(CO)
GN(18/08/2021)

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