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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3041 OF 2013

AND

M.P.NO.1 OF 2013

The United India Insurance Co. Ltd.,
Sathguru Complex, 640 (Old 488/489)
Anna Salai, Nandanam, Chennai 35.
D.O : 134, Greams Road, Chennai-6.

.. Appellant/2nd Respondent

Vs.

1.Munusamy
2.Vijayakumar

... 1st Respondent/Petitioner
.. 2nd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 17.04.2013 made in M.C.O.P. No. 2965 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.F.Terry Chellaraja
for M/s.V.Velu (For R1)
R2 : Exparte

J U D G M E N T

This appeal is filed against the award dated 17.04.2013 made in M.C.O.P.No.2965 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.2965 of 2010, on the file of the VI Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.08.2009.



3. According to the 1st respondent, on the date of accident viz., 02.08.2009, at about 15.30 hours, while he was travelling as pillion rider in the TVS Apache Motorcycle bearing Registration No. TN-07-BB-4722, belonging to the 2nd respondent, from Koovathur to Pondicherry Direction on ECR Road, at Kodapattinam, near Vakkarakallamman Temple, Kancheepuram District, the rider of the two wheeler drove the vehicle in a dangerous speed in a rash and negligent manner and dashed against a post and caused the accident. Due to the said accident, the deceased sustained multiple and grievous injuries all over the body and filed the claim petition, claiming compensation against the 2nd respondent as owner and appellant, as insurer of the said 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 has occurred due to contributory negligence on the part of the 1st respondent. It is evident from the FIR filed by the 2nd respondent, owner of the TVS Apache Motorcycle that two pillion riders travelled in the Motorcycle at the time of accident, in addition to the rider, in breach of the policy conditions. Hence, the appellant is not liable to indemnify the 2nd respondent. On the date of accident, the rider of the Motorcycle was holding a driving license authorising him to drive a four wheeler in light motor category (LMV) only and to drive transport vehicle vide badge and the rider of the Motorcycle was not holding any valid driving license to ride the two-wheeler. The appellant-Insurance Company denied the manner of the accident, age, avocation, income, injuries sustained, period of treatment taken and expenses incurred and disability suffered by the 1st respondent. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one Doctor as P.W.2 and marked 10 documents as Exs.P1 to P10. The appellant examined one Murugesan as R.W.1 and marked 4 documents as Exs.R1 to R4.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the rider of Motorcycle belonging to the 2nd respondent and directed the appellant as insurer of the vehicle to pay a sum of Rs.9,02,000/- as compensation to the



1st respondent at the first instance and recover the same from the 2nd respondent.

8. Against the said award dated 17.04.2013 made in M.C.O.P. No. 2965 of 2010, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the rider of the Motorcycle, the 2nd respondent herein, owner of the vehicle are close relative of the 1st respondent. Knowing fully well that the seating capacity is only 2, three persons travelled in the Motorcycle at the time of accident, in violation of policy and permit conditions. The said three persons travelled with lot of articles and goods for temple festival and invited the accident. The 1st respondent failed to examine the rider of the Motorcycle, who is his close relative. The accident occurred only due to negligence on the part of the 1st respondent and other pillion riders. Hence, the 1st respondent cannot maintain the claim petition under Section 166 of the Motor Vehicles Act, 1988. According to the learned counsel appearing for the appellant, the 2nd respondent did not possess valid driving license at the time of accident and they proved the same by examining R.W.1. The Tribunal failed to consider the evidence of R.W.1 in proper perspective and erred in ordering pay and recovery when the appellant is not liable to pay compensation. The Tribunal ought to have exonerated the appellant-Insurance Company from its liability. In any event, the assessment of P.W.2- Doctor is excessive and disability certificate issued by P.W.2 - Doctor is without any basis, as the injuries sustained by the 1st respondent cannot attract such a huge disability. The assessment is against the medical science and guidelines. The disability assessed by the Doctor is in respect of a part of the body or limb and the same cannot be for whole body. The disability is only a physical disability. The amounts granted by the Tribunal under different heads are excessive. The compensation awarded by the Tribunal under the heads, pain and suffering, loss of amenities and loss of income are excessive and prayed for dismissal of the appeal.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent by oral and documentary evidence, proved that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent. The accident has not occurred due to triple riding as alleged by the appellant. The Tribunal has considered the entire materials on record in proper perspective and awarded compensation and prayed for dismissal of the appeal.



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

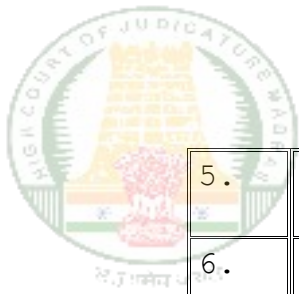
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12. From the materials on record, it is seen that it is the contention of the 1st respondent that the rider of the Motorcycle drove the same in a rash and negligent manner and dashed on the road side post and caused the accident. To substantiate the said contention, the 1st respondent examined himself as P.W.1 and marked Ex.P1 - FIR which was registered against the rider of the Motorcycle. It is the contention of the learned counsel appearing for the appellant that the accident has occurred due to triple riding. The respondents 1 and 2 knowing fully well, contrary to the policy and permit conditions, along with other pillion riders, travelled at the time of accident and invited the accident. For violation of permit and policy condition, the appellant is not liable to pay any compensation. From the award of the Tribunal, it is seen that based on the evidence let in, the Tribunal held that the accident has occurred due to rash and negligent riding by the rider of the Motorcycle and appellant as insurer of the vehicle is liable to pay the compensation. At the same time, the Tribunal failed to consider that at the time of accident, three persons travelled in the Motorcycle, contrary to the permit and policy condition. It has been categorically held by this Court that when more than two persons travel in Motorcycle, they also contribute to the negligence. The rider of the Motorcycle was almost sitting on the petrol tank and his position is so cramped that his movements are restricted and he cannot have complete control over the brake and thus, he also contributed negligence to the accident. When more than 2 persons travel in the Motorcycle, 25% contributory negligence is consistently fixed on the part of the claimant where he was a rider or pillion rider. In view of the said principle, the contention of the learned counsel appearing for the appellant that the 1st respondent also contributed to negligence for the accident, has considerable force and is acceptable. For the above reason, 25% negligence is fixed on the part of the 1st respondent and hence, the 1st respondent is entitled to only 75% of the compensation. It is well settled that for not possessing driving license, the Insurance Company cannot be exonerated fully. The Tribunal considering the judgment of this Court and the Hon'ble Apex Court, ordered pay and recovery. There is no error in the said finding of the Tribunal warranting interference by this Court. The appellant is directed to pay 75% of the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent, owner of the vehicle.



13. As far as the quantum of compensation is concerned, it is the claim of the 1st respondent that he was working as a Carpenter and was earning a sum of Rs.15,000/- per month at the time of accident. In the absence of any material evidence to prove his avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the 1st respondent. Due to the injuries and disability sustained in the accident, he was not able to do his carpentry work and he suffered loss of earning power. The 1st respondent examined P.W.2 - Doctor who deposed the nature of injuries and disability suffered by the 1st respondent. P.W.2 - Doctor examined the 1st respondent and assessed that the 1st respondent suffered 80% disability. The Tribunal considering the entire medical records and evidence of P.W.2 Doctor, fixed loss of earning power of the 1st respondent as 60%, based on the materials on record. The same is proper. The Tribunal by giving reason, has concluded that the 1st respondent has suffered loss of earning power and awarded compensation by applying multiplier method. The same is not erroneous. The 1st respondent was aged 33 years at the time of accident. The multiplier applicable as per the judgment of the Hon'ble Apex Court is '16', whereas, the Tribunal applied the multiplier '17'. Hence, applying the correct multiplier '16', the compensation awarded by the Tribunal towards loss of earning power is modified as Rs.6,91,200/- [Rs.6,000/- x 12 x 16 x 60%]. The 1st respondent has filed two discharge summaries as Exs.P2 and P3 to show that he has taken treatment as in-patient in Government General Hospital from 02.08.2009 to 08.09.2009, for a period of 36 days and from 12.11.2009 to 10.02.2010, for a period of three months and undergone surgery on 25.08.2009. Considering the nature of injuries suffered and the period of treatment taken, the amount of Rs.5,000/- each granted by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.20,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	36,000/-	36,000/-	Confirmed
2.	Transportation	5,000/-	20,000/-	Enhanced
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Pain and sufferings	50,000/-	50,000/-	Confirmed



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5.	Medical expenses	16,297/-	16,297/-	Confirmed
6.	Attendant charges	5,000/-	5,000/-	Confirmed
7.	Loss of amenities	50,000/-	50,000/-	Confirmed
8.	Loss of earning power	7,34,400/-	6,91,200/-	Reduced
	Total	9,01,697/- rounded off to 9,02,000/-	8,88,497/- rounded off to 8,89,000/-	
	75% of the award amount		6,66,750/-	Reduced by Rs.2,35,250/-

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.9,02,000/- is modified to Rs.6,66,750/- along with interest and costs. The appellant-Insurance Company is directed to deposit the modified award amount, now determined by this Court, 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. No. 2965 of 2010 at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the modified 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 excess amount, if any, lying the credit of M.C.O.P. No. 2965 of 2010, 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(CCC)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The VI Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to M/s.V.Velu, Advocate, S.R.No.23447
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.23257

C.M.A.No.3041 of 2013
and M.P.No.1 of 2013

CA(CO)
CS/31/08/2021