

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3329 of 2013

The Branch Manager,
The New India Assurance Co.Ltd.,
Vellore.

.. Appellant/2nd respondent

..Vs..

1.Murugan ...1st Respondent/Appellant

2.Govindaraj ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 30.04.2012 in M.C.O.P.No.118 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Cheyyar, Thiruvannamalai.

For Appellant : Mr.N.Anand

For Respondents : Mr.S.Makesh for R2

JUDGMENT

The New India Assurance Company Limited, the second respondent in MCOP.No.118 of 2010, on the file of the Motor Accidents Claims Tribunal / Subordinate Judge, Cheyyar, Thiruvannamalai, has filed the present appeal. The claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.3,40,000/- for the injuries sustained by him in a road accident that took place on 25.04.2010.

2. The case of the claimant is that on 25.04.2010, at about 04.30 am, while he was returning from kanchipuram, he got down from the bus in Mangal katroad, near co-operative bank. At that time, a motor cycle bearing Regn.No.TN-25-N-950, which was driven by its driver in a rash and negligent manner, hit against the claimant. Due to the said incident, the claimant sustained grievous injuries.

3. The Tribunal considering the pleadings, oral and documentary evidences, held that the accident occurred due to the negligence on the part of the driver of the second respondent vehicle, which is insured with the appellant herein,

and directed them jointly and severally to pay a sum of Rs.1,58,250/- as compensation to the claimant.

4. The present appellant / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Judge, Subordinate Court / Motor Accidents Claims Tribunal, Cheyyar, Thiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.1,58,250/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the order passed by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.N.Anand, learned counsel appearing for the appellant contended that the learned Trial Judge erred in awarding compensation against the appellant-Insurance Company in the absence of valid driving license for the rider of the motor vehicle at the time of accident, one Mr.Devaraj, by violating the conditions of the policy. The Court below has failed to see the oral evidence adduced by the appellant-Insurance Company and Ex.R1 to Ex.R3, notice issued to the second respondent herein to produce driving license, and erred in holding that the appellant-Insurance Company should have sent notice to the owner of the vehicle and rider of the vehicle to produce the driving license. The Tribunal erred in not advertng to the oral evidence of the R.W.1, who is the Senior Grade Administrative of the appellant-Insurance Company and the Ex.R1 to Ex.R3 and ought to have held that in the absence of any kind of license, it is not possible to prove the said fact by summoning the witness from the RTO concerned. Further, it is submitted by the appellant that the trial Court has failed to see that the rider of the vehicle one Mr.Devaraj, has not been made as a party to the main petition and he did not have any valid license at all and the owner of the vehicle entrusted his vehicle to the person who does not have license to drive the motor cycle. Therefore, the owner of the vehicle has violated the terms and conditions of the policy by entrusting his vehicle to the unlicensed person and the appellant-Insurance Company is not liable to indemnify the owner of the vehicle/the second respondent herein. If at all the claimant is entitled to claim compensation, the owner of the vehicle alone is liable to pay compensation. There is a delay of 11 days in lodging the FIR before the police. This draws suspicious inference about the accident. Hence, the learned counsel for the appellant prays to allow this appeal.

6. The learned counsel for the second respondent would submit that the averments stated in the claim petition strictly denies the fact of the alleged accident involving the above said vehicle. The second respondent appears to have fixed the vehicle

to get unlawful enrichment. There is a delay of 11 days in lodging FIR before the police, which draws inference about the suspicion of the accident. Hence, the learned counsel for the second respondent prays to dismiss the appeal.

7. Though First Information Report was registered against the rider of the motor cycle, a copy of the final report filed by the Police has been filed before the Tribunal with a delay of 11 days. The Tribunal was left with the evidence of the injured in MCOP.No.118 of 2010. They had clearly deposed that the driver of the motor cycle was rash and negligent in driving his vehicle and hit the claimant. As a result of which, the claimant sustained grievous injuries all over his body. No contra evidence was filed by the present appellant to disprove the same. In the facts and circumstances of the present case, the orders passed by the Tribunal is perfectly in order and I do not see any reason to interfere with the same.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant / New India Assurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.1,58,250/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.118 of 2010 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Cheyyar, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/ claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

The Motor Accidents Claims Tribunal,
Subordinate Court,
Cheyyar, Thiruvannamalai.

+1 cc to M/s.S.Makesh, Advocate Sr.No. 16174

C.M.A.No.3329 of 2013

VSNI (CO)

RMP (03/02/2021)