IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.771 OF 2020

Minor S.Mugundhan,
Rep. By his next friend/natural
Guardian father Senthilkumar

... Appellant/Petitioner

.Vs.

1. P.Selvakumaran

2. The New India Assurance Company Limited,
No.12, New Hospital Road,
Gobichettipalayam,
Erode District.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 15.11.2019, made in M.C.O.P.No.2 of 2017, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani.

For Appellant	:	Mr.P.Parthikannan
Respondent 1	:	No Appearance
For Respondent 2	:	Mr.R.Sivakumar

J U D G M E N T

Against the order of dismissal of claim petition by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal.

2. The case of the appellant/claimant is that he was a school going boy aged 14 years. On 04.12.2016, while he was travelling as a pillion rider in a TVS moped driven by his grandfather on Thayirpalayam road, a vehicle bearing

registration No.TN-36-W-3555, owned by the first respondent and insured with the second respondent/insurance company came in a rash and negligent manner and dashed against the moped, in which, he sustained injuries all over the body and he was admitted in a private hospital in Coimbatore as inpatient. Hence, claiming a sum of Rs.1,00,000/- as compensation, the appellant/claimant filed the claim petition before the Tribunal.

3. Before the Tribunal, the first respondent owner of the offending vehicle remained ex parte. The second respondent/ insurance company contested the claim petition stating that at the time of the accident, the first respondent vehicle does not have a valid insurance policy and the driver of the vehicle was also not having a valid driving licence, which is a violation of policy condition and hence the insurance company is not liable to pay compensation. That apart, the second respondent/insurance company contended that the appellant/claimant suffered only minor injuries and the compensation claimed by him is highly excessive.

4. Before the Tribunal, in order to prove the case, the appellant/claimant examined his father as P.W.1 and marked as many as twelve documents as Exs.P1 to P12. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record held that the appellant/claimant failed to prove the ownership of the offending vehicle and the insurance policy of the offending vehicle was not marked before the Tribunal. That apart, the Registration Certificate of the offending vehicle has also not been produced before the Tribunal. Holding that the ownership of the vehicle and the insurance of the vehicle has not been proved, dismissed the claim petition. Challenging the same, the appellant/claimant is before this Court with this appeal.

6. The learned counsel appearing for the appellant/claimant would submit that the first respondent is the owner of the vehicle and the same is insured with the second respondent. The appellant/claimant was not in a position to get a copy of the registration certificate and insurance policy but the appellant/claimant had produced the registration number of the vehicle and the insurance policy number of the offending vehicle. But the Tribunal without considering the same, mechanically dismissed the claim petition. The appellant/ claimant suffered serious injuries and he has also spent more than Rs.5,000/- towards medical expenses, for which, medical bills was also marked as Exs.P8 and P9 and without considering the same, the Tribunal dismissed the claim petition.

7. Per contra, the learned counsel appearing for the second respondent/insurance company would submit that the registration certificate and also the insurance policy was not marked before the Court and therefore the Tribunal rightly held that the ownership of the vehicle has not been proved and dismissed the claim petition and there is no illegality in the order passed by the Tribunal.

8. Heard and considered the rival submissions.

9. Considering the fact that the insurance policy number of the offending vehicle has been given by the appellant/claimant, this Court directed Mr.R.Sivakumar, learned counsel appearing for the second respondent/insurance company to verify whether any valid insurance was available for the offending vehicle. On verification, the learned counsel for the second respondent/ insurance company fairly submitted that the insurance policy was in vogue and he has also produced a copy of the policy, which clearly shows that the policy was valid from 12.06.2015 to 11.06.2016 and the accident had taken place on 04.02.2016, during the coverage of the insurance policy. Even though the insurance policy was not marked before the Tribunal, in the interest of justice, this Court takes judicial note of the same. That apart, as the accident had taken place in the year 2016, this Court is of the view that if the matter is remanded to the Tribunal for marking the documents, it will consume more time and therefore this Court decided to deal with the appeal on merits based on the evidence available on record.

10. The appellant/claimant is a 14 years old school going boy and considering the medical evidence, he had suffered some contusion and abrasions all over the body and there is no fracture. That apart, he has also spent a sum of Rs.5,000/- towards medical expenses. Considering the above circumstances, this Court is of the view that awarding a sum of Rs.25,000/- towards pain and sufferings and a sum of Rs.5,000/- towards medical expenses totalling a sum of Rs.30,000/- as compensation would meet the ends of justice. As there was a insurance policy coverage of the first respondent vehicle, the second respondent/ insurance company directed to pay the compensation to the appellant/claimant.

11. In the result, the Civil Miscellaneous Appeal is partly allowed and a sum of Rs.30,000/- is awarded as compensation together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The second respondent/insurance company is directed to deposit the compensation 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.2 of 2017, on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani. As the appellant/claimant is a minor the compensation amount shall be invested in any one of the Nationalized Bank till he attain majority. The appellant/claimant is directed to pay necessary Court fee, if any, on the compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
IV Additional District Judge,
Bhavani.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Kaithamalaikumaran, Advocate, S.R.No.39102
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.39249

C.M.A.NO.771 OF 2020

MP(CO)
CS/03/09/2021