

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3746 of 2013

and

M.P.No.1 of 2013

M/s United India Insurance Co. Ltd.,
III Party Claim cell,
Chennai - 2

... Appellant/2nd Respondent

Vs.

1. Thiru. P. Mani

..Respondent I/Petitioner

2. Thiru P. Selvakumar

...Respondent II/Respondent I

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree passed in M.C.O.P.No.237 of 2007 on 30.08.2011 on the file of the Learned Motor Accident Claims Tribunal, Additional District Judge, F.T.C IV of Ponneri at Thiruvallur District.

For Appellant : Mr.Mr.J. Chandran
For Respondent-1 : Mr. V. Vijaykumar
R2 : Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree passed in M.C.O.P.No.237 of 2007 on 30.08.2011 on the file of the Learned Motor Accident Claims Tribunal, Additional District Judge, F.T.C IV of Ponneri at Thiruvallur District.

2.The appellant is the Insurer of the vehicle. The first and second respondents are the claimant and the owner of the vehicle respectively.

3. It is the case of the first respondent that on 31.01.2007 at about 5:30 p.m when the first respondent was travelling as a pillion rider in a Motor Cycle bearing Registration No: TN-20-L-2939 from Manali pudu Nagar to Manali on ponneri High Road and when they were nearing Bharath Petroleum Bunk at K.G.L. Nagar, a motor cycle bearing Registration No: T.N.20-AX-8309 came in the

opposite direction and hit the vehicle in which the first respondent was travelling as a pillion rider. Hence the first respondent filed a claim petition before the Tribunal claiming Rs.2,00,000/- as compensation. The Tribunal after analysing the oral and documentary evidence awarded Rs.1,08,000/- as compensation.

4. Aggrieved by the award passed by the Tribunal, the appellant/Insurance Company has filed this appeal before this Court.

5. Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked nine documents viz., Ex.P1 to Ex.P9. On the side of the respondent, three witnesses were examined viz., R.W.1 to R.W.3 and no documentary evidence was adduced.

6. The learned counsel for the appellant/Insurance Company contend that RW1/ Motor Vehicle Inspector in his report endorsed that the driving license was not produced by the first respondent/claimant and the Tribunal even after accepting the same held that the Insurer of the Vehicle ought to pay compensation, which is unfair and warrants interference of this Court.

7. The learned counsel for the respondents/claimants supported the award and prayed this Court to confirm the award and dismiss this appeal.

8. Heard both sides and also perused the materials available on record.

9. A perusal of the records, it is seen that the appellant viz., United India Insurance has filed a counter affidavit before the Tribunal, submitted that the allegation contained in the claim petition are false and the rider of the two wheeler does not possess valid driving licence at the time of accident. It was also stated that the owner and the insurer for Motor Cycle bearing Registration No: T.N.20-AX-8309 should be impleaded as a party to this appeal.

10. On perusal of the award passed by the Tribunal, it was disputed that i.e. Whether the accident had occurred or not and who is the cause for the accident and whether the claimant is entitled to compensation. All these aspects were discussed elaborately and finally arrived at a conclusion that the claimant is entitled for compensation and the negligent driving of the second respondent is the cause for the accident and as the insurer of the alleged vehicle, the appellant/Insurance Company is liable to pay compensation.

11. With regard to quantum the Tribunal based on the Exs.P.6 to P.9/Medical records awarded Rs.90,000/- towards the head pain and suffering. Considering other relevant materials awarded a sum of Rs.8,000/- and Rs.10,000/- towards Transportation and Extra Nourishment. Thus, quantified Rs.1,08,000/- as total compensation. This Court is of the view that the finding of the Tribunal with regard to quantum is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

12. In view of the above, this Court do not find any error in the award dated 30.08.2011 passed by the Tribunal in M.C.O.P.No.237 of 2007 and there is no merit in the appeal. Hence, this Court is not inclined to interfere with the same.

13. In the result, the Civil Miscellaneous Appeal is dismissed and a sum of Rs.1,08,000/- awarded by the Tribunal as compensation to the claimant is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Judge, F.T.C IV of Ponneri
Thiruvallur District.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.J. Chandran, Advocate sr 9142.

C.M.A.No.3746 of 2013
and
M.P.No.1 of 2013

AD(CO)

SP(01/09/2020)