

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2555 of 2016

and

C.M.P.No.18251 of 2016

National Insurance Company Ltd.,
Hero Honda vertical 101
106, BMC house
N1, Connaught place
New Delhi - 110 001.

... Appellant

Vs.

1.R.Palanisamy

2.C.L.Chinnadurai

3.R.Murugesan

4.K.Vijayakumar

5.Royal Sundaram Alliance Insurance Co. Ltd.
Sundaram Towers
45 & 46, Whites road
Chennai-600 014.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2016 made in M.C.O.P.No.534 of 2012 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.S.Vadivel

For R1 : Mr.C.Deepak Kumar for
Mr.S.Saravana Kumar

For R4 : No appearance

For R5 : Mrs.C.Harini for
Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.02.2016 made in M.C.O.P.No.534 of 2012 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.534 of 2012 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore. 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 30.04.2012.

3.According to the 1st respondent, while he along with one Vellingiri were returning home in a bi-cycle on Sathy road near Coffeekadai bus stop, the Hero Honda motorcycle, which came in the same direction, driven by the 2nd respondent in a rash and negligent manner, hit the bi-cycle heavily. Due to the said accident, the 1st respondent fell down and at that time, the lorry, which came in the opposite direction, driven by its driver at high speed ran over the right thigh of the 1st respondent and caused the accident. In the accident, the 1st respondent sustained crush injuries and therefore, he filed the above claim petition claiming compensation.

4.The 2nd respondent, rider of the Hero Honda motorcycle, 3rd respondent, driver of the lorry and 4th respondent, owner of the lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company, insurer of the Hero Honda motorcycle, filed counter statement denying the averments made by the 1st respondent and contended that the 1st respondent was under the influence of alcohol at the time of accident and fell down on the road. At that time, the driver of the lorry ran over the leg of the 1st respondent and caused crush injury. Therefore, the rider of the motorcycle was not responsible for the accident and the appellant/Insurance Company is not liable to pay any compensation.

6.The 5th respondent/Insurance Company, insurer of the lorry filed counter statement and admitted that the lorry was insured with them. The 5th respondent contended that the accident has occurred due to rash and negligent riding of the motorcycle by the 2nd respondent, who hit the bi-cycle of the 1st respondent and the 1st respondent fell down on the road in front of the lorry, which came in the opposite direction. Therefore, the 5th

respondent is not liable to pay any compensation to the 1st respondent.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Dr.K.Gajendran as P.W.2 and marked nine documents as Exs.P1 to P9. The appellant examined one Dr.Bhuvana as R.W.1 and marked certified copy of Accident Register as Ex.R1.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of the motorcycle by the 2nd respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.10,55,900/- as compensation to the 1st respondent and exonerated the respondents 3 to 5 from their liability.

9. Against the said award dated 24.02.2016 made in M.C.O.P.No.534 of 2012, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent, who was under the influence of alcohol, alone was responsible for the accident and the same was recorded in the Accident Register copy. The appellant/Insurance Company has produced certified copy of Accident Register as well as examined Dr.Bhuvana, who recorded the Accident Register, as R.W.1. The Tribunal failed to consider Ex.R1/Accident Register copy and evidence of R.W.1 properly. F.I.R. was registered against both the 2nd respondent/rider of the motorcycle as well as 3rd respondent/driver of the lorry belonging to the 4th respondent. Both of them pleaded guilty in the criminal case and paid fine. The Tribunal ought to have apportioned the negligence on the part of the 1st respondent, 2nd respondent/rider of the motorcycle and the 3rd respondent/driver of the lorry. The Tribunal erred in fixing the entire negligence on the part of the 2nd respondent/rider of the motorcycle. He further contended that the age of the 1st respondent was 57 years at the time of accident as per Ex.R1/Accident Register copy. The Tribunal erred in fixing the age of 1st respondent as 54 years and applying multiplier 11. The Tribunal ought to have applied multiplier 9. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. The learned counsel appearing for the 1st

respondent/claimant contended that the appellant/Insurance Company has not let in any evidence before the Tribunal to prove that the 1st respondent was under the influence of alcohol at the time of accident. On the other hand, the 1st respondent has let in evidence to prove the negligence on the part of the 2nd respondent/rider of the motorcycle. The Tribunal considering the evidence let in before it, rightly fixed negligence on the part of the 2nd respondent/rider of the motorcycle, directed the appellant/Insurance Company to pay the compensation and prayed for dismissal of the appeal.

12. Though notice was served on the 4th respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

13. The learned counsel appearing for the 5th respondent/Insurance Company contended that due to rash and negligent riding by the 2nd respondent/rider of the motorcycle, who hit the cyclist/1st respondent from behind, the 1st respondent fell down on the right side of the road and thus the accident has occurred. The 3rd respondent/driver of the lorry, who has driven the same carefully following the traffic rules, could not expect falling down of the 1st respondent on the right side of the road. The Tribunal considering the same, rightly fixed the entire negligence on the part of the 2nd respondent/rider of the motorcycle and exonerated the respondents 3 to 5 from their liability and prayed for dismissal of the appeal.

14. Heard the learned counsel appearing for the appellant as well as the respondents 1 & 5 and perused all the materials available on record.

15. From the materials available on record, it is seen that the 1st respondent has contended that while he was riding in his bi-cycle, the 2nd respondent rode the motorcycle in a rash and negligent manner, dashed on the back side of the bi-cycle and caused the accident. The 1st respondent fell down on the road and the lorry which came from opposite direction ran over his leg and crushed his ankle. F.I.R. was registered against both the 2nd respondent/rider of the motorcycle as well as the 3rd respondent/driver of the lorry. They pleaded guilty before the Criminal Court and paid fine. The contents of F.I.R. as well as judgment of the Criminal Court are not binding on the Tribunal. The Tribunal has to independently decide the evidence let in before it.

16. In the present case, the Tribunal considering the evidence of the 1st respondent and in the absence of any contra evidence, held that the accident has occurred only due to rash and negligent riding by the 2nd respondent/rider of the motorcycle and the 1st respondent sustained injuries only due to that. The Tribunal has given reason for holding that the driver of the lorry was not responsible for the accident and there was no negligence on the part of the driver of the lorry. The reason given by the Tribunal for such finding is valid. There is no error to interfere such finding.

17. The appellant filed counter statement and have stated that the 1st respondent due to the influence of alcohol, dashed on the motorcycle and fell down on the road. At that time, the lorry ran over the 1st respondent's leg, which was crushed by its wheel. The accident was not due to negligence on the part of the 2nd respondent/rider of the motorcycle. To substantiate this contention, the appellant/Insurance Company has not examined the rider of the motorcycle or any other independent witness. Therefore, the contention of the learned counsel appearing for the appellant that the 1st respondent is responsible for the accident as he was under the influence of alcohol is not accepted. It is well settled that just because the claimant was under the influence of alcohol, the Insurance Company cannot fix the negligence on him. Negligence has to be fixed on acceptable evidence let in before the Tribunal. In the present case, no evidence was let in by the appellant/Insurance Company to prove that the 1st respondent was under the influence of alcohol and to prove the negligence on the part of the 1st respondent or 3rd respondent/driver of the lorry. The Tribunal has given valid reason for holding that there was no negligence on the part of the driver of the lorry, he is not responsible for the accident, fixed negligence on the part of the 2nd respondent/rider of the motorcycle and directed the appellant/Insurance Company to pay the compensation. There is no error in the said finding of the Tribunal warranting interference by this Court.

18. As far as quantum of compensation is concerned, the 1st respondent claimed that he was working as carpenter and was earning a sum of Rs.600/- per day. He has not let in any evidence to prove his avocation and income before the Tribunal. From the materials available on record, it is seen that in the accident, right ankle of the 1st respondent was amputated. In view of the fact that the 1st respondent was working as a carpenter and his right ankle was amputated, he cannot do the work as he was doing earlier. In such circumstances, the

Tribunal adopted multiplier method for awarding compensation towards disability, which is in order. The accident is of the year 2012. The Tribunal has fixed a sum of Rs.12,500/- as monthly income of the 1st respondent. The 1st respondent has taken treatment as in-patient in the hospital for more than 47 days. The amount awarded by the Tribunal towards attendant charges is meagre. The Tribunal has not awarded any compensation towards loss of amenities. In view of the same, the amounts awarded by the Tribunal under different heads are not interfered with and the same are hereby confirmed.

19. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.10,55,900/- awarded by the Tribunal as compensation to the 1st respondent/claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal
Coimbatore.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.4887
+1cc to M/s.I.Abrar MD Abdullah, Advocate SR.4072
+1cc to Mr.S.Vadivel, Advocate SR.3678

C.M.A.No.2555 of 2016

BS (CO)
CB(14/09/2020)