IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2392 of 2014
and M.P.No.1 of 2014

The Divisional Manager
M/s.United India Insurance Co. Ltd.
TKM complex, Katpadi Road
Vellore, Vellore District. ... Appellant /2nd Respondent

Vs.

1.C.Kumar ...1st Respondent/Claimant

2.Jaichandran ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2013 made in M.C.O.P.No.1411 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupattur, Vellore District.

For Appellant	:	Mr.J.Chandran
For R1	:	Mr.PA.Sudesh Kumar
For R2	:	No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 07.11.2013 made in M.C.O.P.No.1411 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupatthur, Vellore District.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1411 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tirupatthur, Vellore District. The 1st respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.01.2009.

3.According to the 1st respondent, on the date of accident i.e., on 18.01.2009 at 13.20 hours, while he was riding in his Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778 from Vaniyambadi to Jolarpettai Main Road towards Jolarpettai Junction, near S.Kodiyur School, the rider of the TVS Suzuki motorcycle bearing Registration No.TN-29-Z-2264 viz., S.Kumar, rode the same in a rash and negligent manner, suddenly slow down his motorcycle and tried to turn, due to which, hit the motorcycle driven by the 1st respondent and thus, the accident has occurred. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and the appellant/Insurance Company.

4.The 2nd respondent, owner of the Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778, remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778 filed counter statement denying the averments made by the 1st respondent and stated that the accident has occurred due to rash and negligent riding by the rider of the TVS Suzuki motorcycle bearing Registration No.TN-29-Z-2264 viz., S.Kumar. Both the riders of the motorcycle did not possess valid driving license to ride the vehicles. Since the 1st respondent himself is negligent in riding the motorcycle, he is not entitled to any compensation. The accident was not informed to the appellant. TVS Suzuki motorcycle bearing Registration No.TN-29-Z-2264 was not insured with any other Insurance Company. The owner and insurer of the TVS Suzuki motorcycle were not made as parties to the claim petition. Hence, the petition is bad for non-joinder of necessary parties. Therefore, the claim of compensation against the appellant is not maintainable as per law. The appellant/Insurance Company has also denied the age, nature of injuries and treatment taken by the 1st respondent. In any event, the 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, Dr.Selvanthan was examined as P.W.2 and eight documents were marked as Exs.P1 to P8. The appellant/Insurance Company examined one Mr.Jagapoobalarayan, Official of R.T.O. Vaniyambadi as R.W.1 and one Mr.Kumar, Official of Insurance Company as R.W.2 and marked four documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the personal accident coverage is attached with Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778 and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,00,000/- as compensation to the 1st respondent under personal accident coverage.

8.Against the said award dated 07.11.2013 made in M.C.O.P.No.1411 of 2013, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to see that the 1st respondent rode the Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778 in a rash and negligent manner and dashed against the TVS Suzuki motorcycle bearing Registration No.TN-29-Z-2264 from behind. The Tribunal ought to have held that the 1st respondent is a tort-feasor and he is not entitled to any compensation for his own negligence. The 1st respondent himself was the rider of the motorcycle, he is not a third party and is not entitled to any compensation under Section 163-A of the Motor Vehicles Act. The 1st respondent did not possess driving license on the date of accident i.e., on 18.01.2009 and he has taken license only on 31.10.2011. The appellant has proved the same by examining R.W.1 and marking Ex.R1, driving license of the 1st respondent which was issued after the accident. The Tribunal without considering the oral and documentary evidence let in by the appellant, erroneously held that the appellant is liable to pay the compensation as per the contractual liability under personal accident coverage and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 2nd respondent, owner of the vehicle has paid additional premium for personal accident coverage for the owner. The 1st respondent is the rider of the motorcycle at the time of accident. As per personal accident coverage, the 1st respondent is entitled to receive compensation. The Tribunal considering the entire materials on record, directed the appellant to pay compensation as per personal accident coverage to the 1st respondent. There is no error in the said award of the Tribunal and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials on record, it is seen that the 1st respondent rode the Hero Honda Splendor Plus motorcycle bearing Registration No.TN-23-BY-0778 belonging to the 2nd respondent and dashed against the TVS Suzuki motorcycle bearing Registration No.TN-29-Z-2264, which was going in front of him. F.I.R. was registered against the 1st respondent, he admitted his guilt and paid fine. The 1st respondent being the tort-feasor is not entitled to claim compensation against the 2nd respondent, owner of the motorcycle and the appellant as insurer. At the same time, from the materials on record, it is seen that the 2nd respondent has paid additional premium for personal accident coverage for owner-cum-driver of the motorcycle. The appellant has not disputed the payment of additional premium, but he is denying the liability to pay compensation even under personal accident coverage on the ground that the 2nd respondent, owner was not riding the motorcycle at the time of the accident and the 1st respondent who is not the owner, is not entitled to claim compensation under personal accident coverage. The said contention is contrary to the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], wherein it has been held that the borrower of the two wheeler steps into the shoes of the owner of the vehicle and he is not entitled to maintain the claim petition even under Section 163-A of the Motor Vehicles Act, when he himself is the tort-feasor. In the judgment of the Hon'ble Apex Court reported in (2020) 2 SCC 550 [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], the Hon'ble Apex Court referring the Ningamma case cited supra held that the rider of the two wheeler steps into the shoes of the owner and he is entitled to claim compensation under personal accident coverage, when the owner has paid additional premium for personal accident coverage. In paragraph No.5.8, the Hon'ble Apex Court has held as follows:

> “5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in

case of death and therefore, the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle."

In view of the two judgments referred to above, the 1st respondent who was riding the motorcycle is entitled to claim compensation under personal accident coverage as he steps into the shoes of the owner of the vehicle. The maximum amount payable to the 1st respondent is only Rs.1,00,000/-. The Tribunal has granted only Rs.1,00,000/- under personal accident coverage to the 1st respondent. Hence, there is no error in the award of the Tribunal awarding Rs.1,00,000/- as compensation to the 1st respondent warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.1,00,000/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Sub Court,
  Motor Accident Claims Tribunal,
  Tirupattur at Vellore District.

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

+1cc to Mr.J.Chandran, Advocate Sr.43047

C.M.A.No.2392 of 2014
and M.P.No.1 of 2014

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