

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.3506 & 3507 of 2014
and C.M.P. Nos. 19832 & 19833 of 2017

Minor Preethi

(declared as major and her father and next friend
Ashok Kumar discharged from guardianship vide
order of this Court dated 18.11.2020
made in C.M.P. Nos.19832 and 19833/2017)

... Appellant in
C.M.A. No.3506 of 2014

Ashok Kumar

... Appellant in
C.M.A. No.3507 of 2014

Vs.

1.K.N. Manokaran

2.V. Sandhiya

3.The New India Assurance Co. Ltd.,
82, Dr. Thirumalai Plaza, I Floor,
New Dharapuram Road, Palani.

... Respondents in both the appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
award dated 06.11.2008, made in M.C.O.P. Nos.604 & 605 of 2007,
on the file of the Principal Sub Court, (Motor Accident Claims
Tribunal), Coimbatore.

(In both appeals)

For Appellant : Mr. Ma.P. Thangavel

For Respondents: Mr. M. Sriram (For RR1 & 2)
for M/s. K. Goviganesan

Mr. J. Chandran (For R3)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

These appeals have been filed against the common judgment and decree dated 06.11.2008, made in M.C.O.P. Nos.604 & 605 of 2007, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellant in both the appeals are claimant in M.C.O.P. Nos.604 & 605 of 2007, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Coimbatore. They filed the said claim petitions, claiming a sum of Rs.2,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 04.03.2007.

4.According to the appellants, on the date of accident, when the appellant in C.M.A.No.3507 of 2014 was riding his TVS Motorcycle bearing Registration No.TN-37-AH-0765 in Kovai-Avinasi Road cautiously along with appellant in C.M.A.No.3506 of 2014 as pillion rider, the 1st respondent, driver of the Bus bearing Registration No.TN-39-AF-5115 belonging to the 2nd respondent, drove the same in a rash and negligent manner and while overtaking the Bus on the right side of the Motorcycle driven by the appellant in C.M.A.No.3507 of 2014, dashed against the Motorcycle and caused the accident. The accident occurred due to rash and negligent driving by the 1st respondent, driver of the Bus. In the accident, the appellant in both the appeals suffered multiple injuries and fracture. For the injuries suffered by them, they filed claim petitions, claiming compensation against the respondents, as driver, owner and insurer of the offending vehicle.

5.The respondents 1 and 2 remained exparte before the Tribunal.

6.The 3rd respondent-Insurance Company filed separate counter statements and denied all the averments made by the appellant in their claim petitions. According to the 3rd respondent, the appellant in C.M.A.No.3507 of 2014 contributed to the accident by his rash and negligent driving of the Motorcycle. The 2nd respondent has violated the policy conditions by letting the 1st respondent to drive the Bus without valid driving license at the time of accident. Hence, the 3rd respondent is not liable to indemnify the 2nd respondent. In any event, the appellant in both the appeals have to prove their

age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of both the claim petitions.

7. Before the Tribunal, the appellant in C.M.A.No.3507 of 2014 examined himself as P.W.1, examined Doctor as P.W.2 and marked 6 documents as Exs.P1 to P6. The respondent examined two witness as R.W.1 and R.W.2 and marked 13 documents as Exs.R1 to R13.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Bus belonging to the 2nd respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.45,053/- and Rs.74,392/- as compensation to the appellant in both the appeals respectively and dismissed the claim petitions as against the 3rd respondent-Insurance Company.

9. Challenging the portion of the award dismissing the claim petition as against the 3rd respondent and not being satisfied with the amounts awarded by the Tribunal in the common award dated 06.11.2008, made in M.C.O.P. Nos.604 & 605 of 2007, the appellants have come out with the present appeals respectively.

10. The learned counsel appearing for the appellant in both the appeals contended that the Tribunal erred in dismissing the claim petitions against the 3rd respondent-Insurance Company on the ground that the 1st respondent, driver of the offending vehicle did not possess valid driving license at the time of accident. The Tribunal failed to see that for violation of any policy conditions, 3rd party should not be made to suffer and Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle. The Tribunal failed to consider that the 3rd respondent-Insurance Company did not prove that the 1st respondent was not possessing driving license at the time of accident. Hence, the finding of the Tribunal that the 1st respondent did not possess driving license is liable to be set aside. The appellant in C.M.A.No.3506 of 2014 was aged 14 years at the time of accident and was studying 9th Standard. In the accident, she suffered grievous injuries and underwent surgeries and bones are malunited, due to which her studies are affected. The appellant in C.M.A.No.3507 of 2014 was working as Goldsmith in M/s.Velankani Machine Cutting and was earning a sum of Rs.10,000/- per month. Due to the injuries, he underwent surgeries and bones are not properly united and his avocation has been fully affected. The learned counsel appearing for the appellant in both the appeals further contended that the amounts awarded by the Tribunal in both the appeals are meagre. The

Tribunal ought to have awarded Rs.50,000/- each towards loss of amenities, disfigurement, mental agony, extra nourishment and transportation and prayed for setting aside the order of dismissal of the claim petitions as against the 3rd respondent and for enhancement of the compensation.

11.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that at the time of accident, the 1st respondent driver of the vehicle did not possess driving license. The 3rd respondent examined R.W.1 and R.W.2 and marked Exs.R1 to R13 and proved that the 1st respondent, driver of the vehicle did not possess driving license at the time of accident and he has renewed the license only after the accident. The Tribunal considering the oral and documentary evidence let in by the 3rd respondent-Insurance Company, has rightly dismissed the claim petition against the 3rd respondent. The appellants have sustained only simple injuries. The appellant in C.M.A.No.3506 of 2014 did not examine any Doctor to prove the nature of injuries suffered by her. The compensation granted for pain and suffering at Rs.27,000/- is excessive. The Tribunal has granted Rs.5,000/- each towards mental agony in both the appeals. In view of the amounts granted for mental agony and excess amounts granted towards pain and suffering, the appellants are not entitled for any enhancement and prayed for dismissal of both the appeals.

12.Heard the learned counsel appearing for the appellant, respondents 1 and 2 as well as the 3rd respondent-Insurance Company in both the appeals and perused the materials available on record.

13.It is the contention of the appellants that while the appellant in C.M.A.No.3507 of 2014 was riding his Motorcycle with the appellant in C.M.A.No.3506 of 2014 as pillion rider, the 1st respondent, driver of the Bus belonging to the 2nd respondent, drove the Bus in a rash and negligent manner and dashed on the Motorcycle and caused accident. The appellant in C.M.A.No.3507 of 2014 examined himself as P.W.1 and marked FIR as Ex.P1. The respondents have not let in any contra evidence with regard to negligence on the part of the 1st respondent. The Tribunal considering the evidence of appellant in C.M.A.No.3507 of 2014 as P.W.1, Exs.P1 to P3 and in the absence of any contra evidence by the 3rd respondent, held that the accident has occurred only due to rash and negligent driving by the 1st respondent, driver of the Bus. The 3rd respondent, insurer of the Bus contended before the Tribunal that the 1st respondent did not possess driving license and to prove the said contention, examined R.W.1 and R.W.2 and marked Exs.R1 to R13. From the evidence of R.W.1 and R.W.2 and Exs.R1 to R13, it is seen that the 1st respondent did not possess driving license at the time of

accident. The accident occurred on 04.03.2007. The driving license of the 1st respondent expired on 29.07.2006 and he renewed the license only on 06.03.2007, only after 2 days of the accident. The contention of the learned counsel appearing for the appellants that the 3rd respondent failed to prove that the 1st respondent did not possess driving license is contrary to the oral and documentary evidence let in by the 3rd respondent and is without merits. From the award of the Tribunal, it is seen that the 3rd respondent has proved their contention by examining R.W.1 and R.W.2 and by marking Exs.R1 to R13. The respondents 1 and 2 remained exparte and they have not produced any evidence to prove that the 1st respondent possessed driving license at the time of accident.

14.A three Judges Bench of the Hon'ble Apex Court in a judgment reported in 2020 SCC Online SC 769 [Beli Ram Vs. Rajinder Kumar], has held that when driving license is not renewed and accident has occurred after expiry of driving license and the driver of the vehicle did not possess driving license, the Insurance Company is not liable to pay compensation. The contention of the learned counsel appearing for the appellants that the judgment of the Hon'ble Apex Court referred to above applies only to the claim made under the Workmen Compensation Act and not for the claim made under Motor Vehicles Act is without merits. The Hon'ble Apex Court in the said judgment has held that when the license is not renewed, it amounts to driver not possessing driving license and Insurance Company is not liable to pay compensation. The said principle applies not only for the claim made under the Workmen Compensation Act, but also for claim made under the Motor Vehicles Act. In view of the above materials, there is no error in the finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the Tribunal considering the evidence of nature of injuries, in the absence of Doctor's evidence for the appellant in C.M.A.No.3506 of 2014 regarding the injuries and the evidence of P.W.2 - Doctor for the appellant in C.M.A.No.3507 of 2014, has awarded compensation under different heads, which are not meagre. There is no error in the common award of the Tribunal warranting interference by this Court.

16.In the result, both the appeals are dismissed and the amounts awarded by the Tribunal at Rs.45,053/- and Rs.74,392/- respectively along with interest and costs are confirmed. The respondents 1 and 2 are jointly and severally directed to deposit the award amount, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos.604 & 605 of 2007.

On such deposit, the appellant in both the appeals are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. C.M.P.Nos.19832 & 19833 of 2017 are filed to declare the appellant in C.M.A.No.3506 of 2014 as major and to discharge the natural guardian/appellant in C.M.A.No.3507 of 2014 from the guardianship of his daughter Preethi. The learned counsel appearing for the appellant in C.M.A.No.3506 of 2014 filed Birth Certificate of the minor appellant to prove that she attained majority. Considering the documents filed, both the Civil Miscellaneous Petitions are ordered. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

2.The Section Officer,
V.R Section,
High Court, Madras.

+2cc to Mr.K.Govi Ganesan, Advocate Sr.37258 and 37254
+1cc to M/s.Ma.P.Thangavel, Advocate Sr.36990
+1cc to Mr.Chandran, Advocate Sr.36923

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and C.M.P. Nos. 19832 & 19833 of 2017

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