



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :21.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.152 of 2011

and

M.P.(MD)No.1 of 2011

The Oriental Insurance Co., Ltd.,
Door No.24-E, 12A Sivasakthi,
Shopping Complex,
S.N.High Road,
Tirunelveli,
through its Branch Manager. ... Appellant / 2nd Respondent

Vs.

1.Harikrishnan ... 1st Respondent / Petitioner

2.Subramanian ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.956 of 2008 dated 03.09.2010 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Tirunelveli.

For Appellant : Mr.A.K.Baskarapandian

For 1st Respondent : Mr.V.Sasikumar

For 2nd Respondent : Died (vide order dated 21.03.2013)

JUDGMENT

Heard learned counsel appearing on either side.

2.This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.956 of 2008 dated 03.09.2010 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Tirunelveli.

3.The appellant herein is the second respondent, the first respondent herein is the petitioner/claimant and the second
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respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.956 of 2008 claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation. The Tribunal has awarded a sum of Rs.47,000/- (Rupees Forty Seven Thousand only). Against which, the appellant/insurance company has filed the present appeal.

4.A brief substance of the claim petition in M.C.O.P.No.956 of 2008 is as follows:

On 26.07.2008, at about 07.00 p.m., the claimant was riding his motorcycle bearing the registration No.TN-72-C-1760 from Suthamalli to Cheranmadevi. The second respondent herein drove his motorcycle bearing the registration No.TN-72-AA-4718 from the opposite direction in a rash and negligent manner and hit against the claimant's motorcycle. The claimant was thrown out of the motorcycle and he sustained grievous injuries. He was admitted in the Government medical hospital, Tirunelveli and was 'in patient' from 26.07.2008 till 06.08.2008. The claimant was aged about 22 years at the time of accident. He was earning Rs.6,000/- (Rupees Six Thousand only) by doing agriculture and other works and there was a loss of income to the tune of Rs.8,22,000/- (Rupees Eight Lakhs and Twenty Two Thousand only). The claimant restricted his claim to Rs.2,00,000/- (Rupees Two Lakhs only).

5.The brief substance of the counter filed by the appellant herein is as follows:

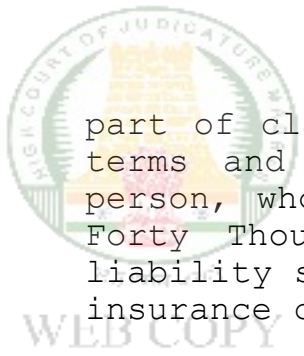
The age, occupation and income of the claimant is to be proved by the claimant. The manner of the accident is denied. The claimant also is equally liable for the accident. The driver of the second respondent herein has no valid driving licence. The appellant herein is not liable to pay the compensation.

6.The brief substance of the additional counter filed by the appellant herein is as follows:

There were two pillion riders in the claimant's motorcycle and that the claimant was in a drunken mood. There was no negligence on the part of the rider of the second respondent herein.

7.The claimant examined himself as P.W.1 and 3 documents were marked as Exs.P1 to P3. Two witnesses were examined as R.W.1 and R.W.2 and three documents were marked as Ex.R1 to R3. After considering both sides, the Tribunal has awarded a sum of Rs.47,000/- (Rupees Forty Seven Thousand only) as compensation. Against which, the appellant/insurance company has preferred this appeal.

8.On the side of the appellant, it is stated that the Tribunal is wrong in fixing the negligence on the part of the driver of the vehicle bearing the registration No.TN-72-AA-4718. The Tribunal has failed to consider the contributory negligence on the



part of claimant and that the owner of the motorcycle violated the terms and conditions of the policy entrusting the vehicle to a person, who has no valid licence. The award of Rs.40,000/- (Rupees Forty Thousand only) for pain and suffering is excessive. The liability should be fixed on the owner of the vehicle and not on the insurance company.

9.On the side of the appellant, it is stated that when the second respondent herein has no valid driving licence, the appellant herein is not liable to pay compensation and that there is no necessity to pay and recover.

10.Ex.P1 is the certified copy of the FIR. Ex.P2 is the certified copy of the rough sketch. The evidence of P.W.1 and Exs.P1 and P2 reveals that the accident was only due to the rash and negligent driving of the driver of TN-72-AA-4718 motorcycle. The certified copy of the insurance policy was marked as Ex.R3. In Ex.R3, it is clearly stated that the insurance policy is valid at the time of accident. The evidence of R.W.1 and R.W.2 reveals that the rider of the second respondent herein is not having any valid licence. The Tribunal has fixed the liability on the appellant herein with liberty to recover the award amount from the owner of the vehicle. The decision of the Tribunal is very reasonable.

11.The claimant sustained injuries. The accident register was marked as Ex.P3. There was fracture on the right toes of the claimant. The claimant is having grievous injuries. The Tribunal fixed compensation for the grievous injuries and pain and suffering as Rs.40,000/- (Rupees Forty Thousand only). In view of the fact that the claimant sustained grievous injury and was in hospital as 'inpatient' for ten days, the claimant should be in need of extra nourishment and transport expenses. Hence, fixing a compensation of Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment and a sum of Rs.2,000/- (Rupees Two Thousand only) towards transportation is reasonable.

12.In the above circumstances, the compensation fixed by the Tribunal is reasonable and correct. There is no merits in the appeal. This Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P.No.956 of 2008 dated 03.09.2010 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Tirunelveli is confirmed.

13.The appellant is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and with costs. The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the same without filing any formal petition before the Tribunal and



after deducting any amount already received by him. Excess amount if any deposited shall be refunded to the appellant. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

To

The Motor Accident Claims Tribunal cum II Additional District Judge,
Tirunelveli.

Copy to:

The Section Officer, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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