



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1157 of 2015

and

M.P.No.1 of 2015

National Insurance Company Limited,
having Office at 74-A, Paramathy Road,
Near Ram Complex,
Namakkal.

.. Appellant/3rd Respondent

Vs.

1.Thirumalaisamy

... Respondent/1st Claimant

2.Kumaravel

3.Kandasamy

4.The Secretary to Government,
Health Department,
Tamil Nadu.

5.The Secretary to Government,
Home Department,
Tamil Nadu.

6.The Director General of Police,
Mylapore,
Chennai.

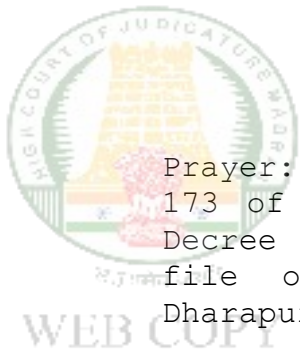
7.The Secretary to Transport Department,
Chennai.

... Respondents/Respondents

8.Union of India,
Rep. by its Secretary,
Ministry of Surface Transport,
New Delhi.

.. Respondents

(Respondents 4 to 8 suo motu impleaded
vide order of this Court dated 06.07.2015
made in M.P.No.1 of 2015 in C.M.A.No.
1157 of 2015)



Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.08.2014 made in M.C.O.P.No.1359 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For RR 4 to 7 : Mr.D.Gopal
Government Advocate (CS)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 21.08.2014 made in M.C.O.P.No.1359 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

2.The appellant is the 3rd respondent in M.C.O.P.No.1359 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.11.2012.

3.According to 1st respondent, on 06.11.2012 at about 07.15 P.M., while he was travelling as pillion rider in the Yamaha Crux motorcycle bearing Registration No.TN 57 J 9633 along with one Soundarajan from west to east on the Dharapuram - Rettaravalasu road, near the Ambedkar Nagar New bye-pass road on the eastern edge of the road, the Maruthi Swift D'Zire car bearing Registration No.TN 41 AC 7171 which was driven by its driver, the 2nd respondent herein, coming from North to South in a rash and negligent manner without following the rules and regulations, dashed against the motorcycle in which the 1st respondent was travelling as pillion rider and caused the accident. In the accident, the 1st respondent and the rider of the motorcycle was thrown away and sustained major injuries on left ankle, left hand metacarpal, index finger, left leg, head and multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to Government Hospital, Dharapuram, where first aid treatment was given. Thereafter, the 1st respondent was taken to K.M.C.H. Hospital at Coimbatore,



where he has taken treatment as inpatient from 06.11.2012 to 13.11.2012. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the respondents 2, 3 and appellant, being the driver, owner and insurer of the car respectively.

4.The respondents 2 & 3, being the driver and owner of the car remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent. According to appellant, the rider of the motorcycle only drove the same in a drunken condition without adhering the traffic rules and caused the accident. The 3rd respondent - owner of the car failed to furnish the particulars of policy, date, time, place of accident, particulars of injured, name of driver and particulars of driving license. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, injuries, period of treatment taken and medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.Periyasamy was examined as P.W.2 and Dr.Kesavamoorthy was examined as P.W.3 and 11 documents were marked as Exs.P1 to P11. The appellant examined one Gopal as R.W.1 and marked three documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the car, 2nd respondent herein belonging to 3rd respondent and directed the appellant-Insurance Company to pay a sum of Rs.2,26,320/- as compensation to the 1st respondent.

8.To set aside the said award dated 21.08.2014 made in M.C.O.P.No.1359 of 2012, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the 1st respondent failed to prove the negligence on the part of the 2nd respondent - driver of the Maruthi Swift D'Zire car belonging to 3rd respondent by letting in any



independent witness. When the claim petition is filed under Section 166 of the Motor Vehicles Act, the claimant has to prove the negligence on the part of the driver of the vehicle. The Tribunal failed to consider that the 1st respondent did not examine the rider of the motorcycle in which he was travelling as pillion rider. In the claim petition filed under Section 166 of the Motor Vehicles Act, the proof of involvement of the vehicle and negligence of the driver is necessary. In the present case, the 1st respondent failed to prove the same. The Tribunal failed to note that the Maruthi Swift D'Zire car belonging to 3rd respondent has been falsely implicated in the present claim petition. The 1st respondent and rider of the motorcycle were under the influence of alcohol at the time of accident. The Tribunal failed to adjudicate the issue that motorcycle in which the 1st respondent traveled was not insured at the time of accident and the rider of the motorcycle did not possess driving license. The Tribunal failed to note that burden is not shifted on the appellant as the 1st respondent has not proved the negligence on the part of the driver of the Maruthi Swift D'Zire car belonging to 3rd respondent. The Tribunal also failed to consider the evidence of R.W.1, the Investigation Officer and documents marked as Exs.R1 to R3. The Tribunal failed to consider the fact that though the F.I.R. was registered against the driver of the Maruthi Swift D'Zire car, in the final report it has been mentioned that F.I.R. was closed as mistake of fact. The Tribunal ought to have dismissed the claim petition and prayed for allowing the appeal and for setting aside the award passed by the Tribunal.

10.The learned counsel appearing for the 1st respondent as well as the learned Government Advocate (CS) appearing for the respondents 4 to 7 separately made their submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the learned Government Advocate (CS) appearing for the respondents 4 to 7 and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the 1st respondent that on 06.11.2012 at about 07.15 P.M., while he was travelling as pillion rider in the Yamaha Crux motorcycle bearing Registration No.TN 57 J 9633 along with one Soundarajan from West to East on the Dharapuram - Rettaravalasu road, near Ambedkar Nagar New bye-pass road on the eastern edge of the road, the Maruthi Swift D'Zire car bearing



Registration No.TN 41 AC 7171 which was driven by its driver, the 2nd respondent herein, from North to South in a rash and negligent manner without following the rules and regulations, dashed against the motorcycle in which the 1st respondent was travelling as pillion rider and caused the accident. In the accident, the 1st respondent sustained grievous injuries and was Hospitalized. To prove this contention, the 1st respondent examined himself as P.W.1 and deposed to that effect. He also marked F.I.R. as Ex.P1, which was registered against the driver of the Maruthi Swift D'Zire car, the 2nd respondent herein.

13.On the other hand, it is the case of the appellant that both the rider of the motorcycle and the 1st respondent were under the influence of alcohol and due to the negligence of the rider of the motorcycle, the accident has occurred. The appellant relied on final report which was marked as Ex.R1. The Police have closed the F.I.R. as mistake of fact. The appellant has not examined the driver of the car or any eyewitness to substantiate their case that accident has occurred only due to rash and negligent driving by the rider of the motorcycle and rider of the motorcycle was under the influence of alcohol at the time of accident. There is nothing on record to show that blood test was conducted to find out the alcohol contents in the blood to prove that rider of the motorcycle was under the influence of alcohol and he was responsible for the accident.

14.The contention of the learned counsel appearing for the appellant that rider of the motorcycle was not examined by the 1st respondent and hence, negligence cannot be fixed on the driver of the Maruthi Swift D'Zire car cannot be accepted as the appellant has not let in any contra evidence to the evidence of 1st respondent as P.W.1. The appellant also did not examine the driver of the Maruthi Swift D'Zire car or any eyewitness to prove their case. In the absence of any contra evidence, the Tribunal considering the evidence of 1st respondent and documents filed by him, fixed negligence on the part of the driver of the Maruthi Swift D'Zire car. There is no error in fixing the negligence on the part of the driver of the Maruthi Swift D'Zire car belonging to 3rd respondent.

15.As far as quantum of compensation is concerned, the Tribunal considering the nature of injuries, period of treatment taken by 1st respondent, evidence of P.W.2 & P.W.3/Doctors, awarded compensation under different heads and the same are not excessive warranting interference by this Court.

16.In the result, this Civil Miscellaneous Appeal is



dismissed and a sum of Rs.2,26,320/- 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 award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1359 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram. On such deposit, the 1st respondent is 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Dharapuram.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.66429
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.66887
+1cc to the Special Government Pleader SR.No.66644

C.M.A.No.1157 of 2015

JPL(CO)
GN(28/03/2022)