

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.682 OF 2011

AND

M.P.NOS.1 AND 2 OF 2011

The New India Assurance Co. Ltd,
F.46, First Main Road,
Anna Nagar East,
Chennai-600 102.

...Appellant/2nd Respondent

Versus

1. K.Gajendran

...1st Respondent/Petitioner

2. R.Subramanian
(R2 set exparte)

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 06.07.2010 made in M.C.O.P. No.1692/2006 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes) at Chennai.

For Appellant : Mr.A.Salomi

For 1st Respondent : Ms.Revathy
for Mr.R.Nalliappan
R2 set exparte

J U D G M E N T

This appeal is laid as against the judgment and decree dated 06.07.2010 made in M.C.O.P. No.1692/2006 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes) at Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 02.04.2006 at about 11.15 hours, when he along with two other students were travelling in a Bike rided by the 1st respondent met with an accident due to which the petitioner sustained grievous injuries on his left leg and got fracture on his fibula and tibia. He was 21 years at the time of the accident and he was working as a Part time Worker in Vasantha Bhavan Hotel, Ayyanavaram and was earning Rs.3,500/- p.m. Immediately after the accident, he was taken to Government Kilpauk Medical College Hospital and admitted as in-patient. Hence, he claimant filed a petition for compensation.

4. Resisting the same, the 2nd respondent filed a counter stating that the Motor Cycle was not covered by valid Insurance policy and the rider of the vehicle has no valid driving licence. It is further stated that the 1st respondent was under the influence of alcohol and as such, the claimant is not entitled for any compensation.

5. On the side of the claimant, he examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P14. On the side of the 2nd respondent, R.W.1 was examined and Ex.R1 to R5 marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a compensation of Rs.1,35,650/- being payable by the respondents. Aggrieved by the same, the 2nd respondent came forward with the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the claimant would contend that either the claimant as a pillion rider or a

pedestrian, he is being a third party, therefore, he is entitled for compensation. The Two Wheeler of the 1st respondent was duly insured with the 2nd respondent and the policy covers the third party and as such, he is entitled for compensation. The 1st respondent was under the influence of alcohol and as such, the Tribunal has held that the compensation to be payable by the 2nd respondent and they are at liberty to recover the same from the 1st respondent.

7. Per contra, learned Counsel for the 2nd respondent would contend that in the Claim Petition of the claimant, it was stated that as though he was also one of the pillion riders of the Motor Cycle which was driven by the 1st respondent whereas he deposed as P.W.1 and categorically stated that he is a pedestrian and while he was crossing the Medavakkam Tank Road from East to West therein, the 1st respondent has driven his motor cycle in a rash and negligent manner from north to south and dashed against him. Therefore, he sustained grievous injuries. He further submitted that in fact a case was registered as against the 1st respondent in Cr.No.124/AS1/06 dated 02.04.2006 for the offences under Section 338 of IPC and Sections 184 and 185 of Motor Vehicles Act. It is categorically proved by Ex.R.2 to R.4. Therefore, the 2nd respondent is not at all held responsible for payment of compensation as awarded by the Tribunal.

8. Heard Ms.Revathy, learned counsel appearing for the claimant and Mr.A.Salomi, learned counsel appearing for the 2nd respondent.

9. The petitioner is a pillion rider of the Two Wheeler ridden by the 1st respondent. The 1st respondent had driven the motor cycle in a rash and negligent manner and caused the accident due to which the petitioner sustained fracture on his tibia and fibula of left leg. Immediately, he was taken to the Government Kilpauk Medical College Hospital and admitted as inpatient from 03.04.2006 to 25.04.2006. The only ground raised by the 2nd respondent is that when the petitioner had taken two stands that he filed a Claim Petition as a Pillion rider and he deposed as if he is a pedestrian and while he was crossing the road, the 1st respondent ridden his motor cycle in a rash and negligent manner and dashed against him, he is not entitled for any compensation. Whether the petitioner is either pillion

rider or pedestrian, is a third party and the vehicle owned by the 1st respondent was duly insured with the 2nd respondent. However, the 1st respondent committed an accident under the influence of alcohol and as such, a case was registered against him under Sections 338 of IPC and Sections 184 and 185 of the Motor Vehicles Act. He was also admitted his guilty and paid fine. Therefore, the Tribunal has rightly awarded the compensation payable by the 2nd respondent with liberty to recover the same from the 1st respondent. Therefore, this Court finds no infirmity or illegality in the award of the Tribunal.

10. In the result, the Civil Miscellaneous Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The VI Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

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

+1cc to Mr.C.Rameshbabu, Advocate, S.R.No.24166

C.M.A.No.682 of 2011

SVI(CO)
RLP(15/09/2021)