



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4601 OF 2019

AND

C.M.P.NO.26089 OF 2019

The Shriram General Insurance Company Limited,
represented by its Manager,
Having office at No.122/2B, 2nd Floor,
B.R.Towers, Opp. To CSI Church,
Denkanikottai Road, Santhi Nagar,
Hosur Town, Krishnagiri District.

.. Appellant/2nd Respondent

..Vs..

1.C.Suresh

... 1st Respondent/Petitioner

2.S.K.Geetha

.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.07.2018 made in M.C.O.P.No.16 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

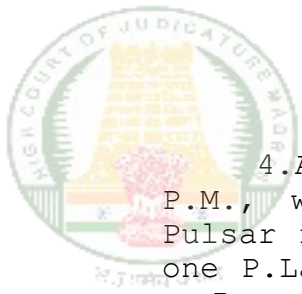
For Appellant : Mr.S.Dhakshnamoorthy

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 13.07.2018 made in M.C.O.P.No.16 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

3.The appellant is the 2nd respondent in M.C.O.P.No.16 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.05.2015.



4. According to 1st respondent, on 07.05.2015 at about 03.00 P.M., while he was traveling as pillion rider in the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 driven by one P.Lachumanahari near Upkar Layout on the Attibele check post - Begepalli road, the driver of the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 owned by 2nd respondent, drove the same in a rash and negligent manner and dashed against the Bajaj Pulsar motorcycle in which the 1st respondent was traveling as pillion rider and caused the accident. In the accident, the 1st respondent and the rider of the motorcycle fell down from the motorcycle and sustained grievous injuries. Immediately after the accident, the 1st respondent was taken to Government Hospital, Hosur and he was referred to N.R.Hospital, Attibele and thereafter he was taken to NIMHANS Hospital, Bangalore. Thereafter he was taken to INDUS Diagnostice, Bangalore for CT Scan and then he was admitted as inpatient at Kaveri Speciality Hospital, Madiwala, Bangalore from 07.05.2015 to 12.05.2015 and underwent surgery on 09.05.2015. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the Honda Activa motorcycle respectively.

5. The 2nd respondent-owner of the Honda Activa motorcycle remained exparte before the Tribunal.

6. 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 accident has occurred only due to the negligent driving by the rider of the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 in which the 1st respondent was traveling as pillion rider as he lost his control over the Bajaj Pulsar motorcycle, fell down on the road along with the pillion rider and sustained injuries. The accident has not occurred due to the negligence on the part of the rider of the Honda Activa motorcycle owned by 2nd respondent. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The rider of the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 is the tortfeasor and he does not possess driving license to drive the motorcycle at the time of accident. The 1st respondent failed to implead the owner and insurer of the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580. The Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 and the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 owned by 2nd respondent were not inspected by the Motor Vehicle Inspector. Further, the F.I.R. was lodged only after a period of 21 days from the date of accident and the defacto complainant, viz., Puttamma, was not an eyewitness to the accident and she is the mother in law of the



1st respondent. The 1st respondent has to prove that the 2nd respondent's vehicle was having valid Registration Certificate and insurance policy at the time of accident. The appellant denied the age, avocation, income, alleged injuries, period of treatment taken and the medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1 and 16 documents were marked as Exs.P1 to P16. The appellant-Insurance Company examined two witnesses as R.W.1 & R.W.2 and marked two documents as Ex.R1 & R2.

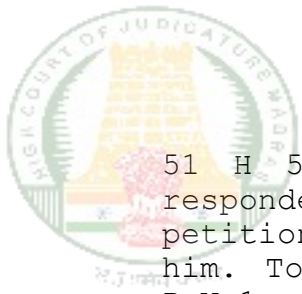
8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 owned by 2nd respondent and directed the appellant to pay a sum of Rs.2,87,265/- as compensation to the 1st respondent.

9. To set aside the said award dated 13.07.2018 made in M.C.O.P.No.16 of 2015, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Honda Activa motorcycle owned by 2nd respondent is not involved in the accident and it is not responsible for the accident. The 1st respondent who was under the influence of alcohol at the time of accident, lost balance and fell down from the motorcycle and sustained injuries. The Tribunal failed to consider the evidence of rider of the motorcycle who was examined as R.W.1, who deposed that the insured vehicle was not involved in the accident and the same has not been corroborated by rough sketch and final report, which was marked as Exs.R1 & R2 respectively. The Tribunal failed to consider Ex.R2/final report, wherein the F.I.R. was closed as mistake of fact. The award of the Tribunal is against the principles laid down by the Hon'ble Apex Court and prayed for setting aside the award passed by the Tribunal.

11. Heard the learned learned counsel appearing for the appellant and perused the entire materials on record.

12. It is the case of the 1st respondent that while he was riding as pillion rider in the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580, the rider of the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 owned by 2nd respondent drove the same in a rash and negligent manner and dashed on the Bajaj Pulsar motorcycle bearing Registration No.KA



51 H 580 and caused the accident. In the accident, the 1st respondent sustained injuries and hence, he filed the said claim petition claiming compensation for the injuries sustained by him. To prove the same, the 1st respondent examined himself as P.W.1 and marked F.I.R., which was registered against the rider of the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 as Ex.P1. On the other hand, it is the case of the appellant that accident has occurred only due to the negligence on the part of the rider of the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 in which the 1st respondent traveled as pillion, lost his control and fell down on the road along with the 1st respondent and both of them sustained injuries. The Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 owned by 2nd respondent has not caused the accident. To prove their case, the appellant examined the rider of the Honda Activa motorcycle bearing Registration No.KA 01 HC 2362 as R.W.1 and marked rough sketch and final report as Exs.R1 & R2 respectively.

13.From the award of the Tribunal, it is seen that R.W.1 in the cross examination admitted that F.I.R. was registered against him and his vehicle was inspected by the Motor Vehicle Inspector. It is the further case of R.W.1 that vehicle owned by 2nd respondent was not responsible for the accident. There is nothing on record to show that R.W.1 or 2nd respondent have filed any objection for the F.I.R. being registered against R.W.1. Further, the F.I.R. was closed as mistake of fact and the appellant filed final report as Ex.R2. The Tribunal did not accept Ex.R2 as no material was placed before the Tribunal for having examined the witnesses and filing the same before the concerned Judicial Magistrate on time. Further, the learned counsel appearing for the appellant, has raised a new ground that due to influence of alcohol, the 1st respondent lost the control, fell down and sustained injuries. This stand was not taken by the appellant in the counter statement. There is no evidence to show that the 1st respondent or the rider of the Bajaj Pulsar motorcycle bearing Registration No.KA 51 H 580 were under the influence of alcohol and the accident occurred only due to the same. Therefore, the ground now raised by the learned counsel appearing for the appellant is not acceptable. For the above reason, there is no reason for interfering with the award passed by the Tribunal.

14.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.2,87,265/- 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.16 of 2015 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. 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 VIII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Hosur.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.17363

C.M.A.No.4601 of 2019

VBM(CO)
CS/18/10/2021