



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1180 of 2021

Vinoth

..Appellant

Vs.

1. Rajmohan

2. The ICICI Lombard General Insurance
Company Limited,
Building No.142, 1st Floor,
ECR Main Road, Near Latha Steel House,
Kottupalayam, Puducherry - 8.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.11.2020 made in M.C.O.P.No.770 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court (F.A.C.), Cuddalore.

For Appellant : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

R1 : Exparte

J U D G M E N T

The matter is heard through "VideoConferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 10.11.2020 made in M.C.O.P.No.770 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court (F.A.C.), Cuddalore.

3.The appellant is the claimant in M.C.O.P.No.770 of 2016 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court (F.A.C.), Cuddalore. He filed the above said claim petition under Section 163(A) of the Motor Vehicles Act, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took



place on 07.12.2015.

4. According to appellant, on 07.12.2015 at about 16.00 hours, while he was riding the motorcycle bearing Registration No.TN 15 5065 from North to South on the extreme left side of the Cuddalore - Pondicherry Main Road, Mullodai, near RTO Check Post, the rider of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 proceeding in front of the appellant, without giving any signal or hand signal, suddenly applied brake and stopped the motorcycle. Due to the same, the appellant, dashed on the backside of the motorcycle owned by 1st respondent and thus the accident occurred. In the accident, he sustained multiple grievous injuries all over the body. Therefore, the appellant filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the respondents being the owner and insurer of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 respectively.

5. The 1st respondent-owner of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, the accident has not occurred as alleged by the appellant. The appellant only drove his motorcycle in a rash and negligent manner without following the road traffic rules and dashed on the backside of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855, owned by 1st respondent which was proceeding in front of the appellant and invited the accident. At the time of accident, the appellant was under the influence of alcohol and he was not possessing valid driving license to drive the motorcycle. F.I.R. was registered against the appellant and charge sheet also filed against him. He was convicted by the Judicial Magistrate-III, Puducherry. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. The SHO, Traffic PS Puducherry failed to forward the relevant documents and not complied with the statutory demand. This respondent denies the Registration Certificate, Insurance of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 and the rider of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 was possessing valid driving license at the time of accident. The owner and insurer of the motorcycle driven by the appellant have to be impleaded as necessary parties in the claim petition. The 2nd respondent denied the age, avocation, income, nature of injuries sustained and the treatment taken by the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.



7. Before the Tribunal, the appellant examined himself as P.W.1 and 9 documents were marked as Exs.P1 to P9. The 2nd respondent-Insurance Company examined one Dhanasekar, Inspector of Police, Kirumampakkam as R.W.1, one Ramkumar, Legal Officer as R.W.2 and marked the copy of the final report as Ex.X1. The disability certificate of the appellant was marked as Ex.C1.

8. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition on the ground that the appellant is the tortfeasor and he cannot maintain the claim petition under Section 163(A) of the Motor Vehicles Act.

9. Against the said order of dismissal dated 10.11.2020 made in M.C.O.P. No.770 of 2016, the appellant has come out with the present appeal for granting compensation.

10. The learned counsel appearing for the appellant contended that there are two vehicles involved in the accident. The Tribunal failed to note that when claim petition is filed under Section 163(A), no negligence needs to be proved. The Tribunal erroneously dismissed the claim petition. The appellant is third party to the motorcycle owned by 1st respondent and hence, he is entitled to compensation. The Hon'ble Apex Court in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] case and 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others] case held that in a claim petition filed under Section 163(A) of the Act, it is not open for the insurer to raise any defence of negligence on the part of the victim. In view of the same, the Tribunal ought to have awarded compensation as per the 2nd Schedule and prayed for allowing the appeal.

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

12. From the materials available on record, it is seen that it is the contention of the appellant that while he was riding the motorcycle bearing Registration No.TN 15 5065 from North to South on the extreme left side of the Cuddalore - Pondicherry Main Road, Mullodai, near RTO Check Post, the rider of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855 proceeding in front of the appellant, without giving any signal or hand signal, suddenly applied brake and stopped the motorcycle. Due to the same, the appellant, dashed on the backside of the motorcycle owned by 1st respondent and thus the accident occurred. In support of his case, the appellant examined himself as P.W.1. On the other hand, it is the case of the 2nd respondent that the appellant only drove his motorcycle in a rash and negligent manner without following the road



traffic rules, dashed on the backside of the Yamaha motorcycle bearing Registration No.TN 31 BB 3855, owned by 1st respondent which was proceeding in front of the appellant and invited the accident. The 2nd respondent further stated that at the time of accident, the appellant was under the influence of alcohol and he was not possessing valid driving license to drive the motorcycle. F.I.R. was registered against the appellant and charge sheet also filed against him and he was convicted by the Judicial Magistrate-III, Puducherry. To substantiate their case, they examined the Inspector of Police, Kirumampakkam as R.W.1, one Ramkumar, Legal Officer of the appellant as R.W.2 and marked the copy of the final report as Ex.X1.

13.From the award of the Tribunal, it is seen that P.W.1 in his cross examination has deposed that he admitted his guilt before the Criminal Court and paid fine as he was driving the motorcycle under the influence of alcohol without valid driving license. Further, the Charge Sheet was also laid against the appellant. The Tribunal considering the judgments of the Hon'ble Apex Court reported in (2008) 5 SCC 736, [Oriental Insurance Company Limited Vs. Rajnidevi], 2009 (13) SCC 710, [Ningamma and another Vs. United India Insurance Company Limited] and the judgment of this Court reported in 2010 (2) TNMAC 105, [United Insurance Company, Chennai Vs. Ravi and another], held that the appellant being the tortfeasor cannot claim compensation for his own negligence against the insurer and he steps into the shoes of original owner and hence, he cannot maintain the claim petition under Section 163(A) of the Motor Vehicles Act and dismissed the claim petition. The Tribunal has given cogent and valid reason for dismissing the claim petition and there is no reason to interfere with the said finding of the Tribunal.

14.In the result, this Civil Miscellaneous Appeal is dismissed confirming the order of dismissal dated 10.11.2020 made in M.C.O.P.No.770 of 2016. No costs.

Sd/-

Deputy Registrar(spl.Cell CJ Conf)

//True Copy//

Sub Assistant Registrar

krk



To

1. The Chief Judicial Magistrate (FAC),
Motor Accident Claims Tribunal,
Cuddalore.

WEB COPY

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

C.M.A.No.1180 of 2021

VBM(CO)
RGA(20/10/2021)