IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1834 of 2018
and
CMP No.14221 of 2018

The Authorized signatory,
M/s.Iffco Tokio General Insurance Company Limited,
100 Feet Road,
Mudaliarpet, Puducherry. ..Appellant/2nd Respondent

Vs.

1. Ramaraju ...1st Respondent/Petitioner

2. M.Krishnan ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree made in MCOP No.740 of 2015, dated 17.01.2018 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Presiding Officer at Puducherry.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.T.Ananthasekar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the Award and Decree passed in MCOP No.740 of 2015, dated 17.01.2018 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Presiding Officer at Puducherry.

2. The appellant is the second respondent in MCOP No.740 of 2015 filed by the claimant / first respondent herein. The Tribunal awarded a sum of Rs.1,77,500/- as compensation in favour of the first respondent/claimant for the injuries sustained in the road accident that occurred on 27.04.2015. Aggrieved by the same, the appellant Insurance Company has preferred this Civil Miscellaneous Appeal.

3. As per the claim petition, the first respondent/claimant who was aged about 41 years at the time of accident, was employed as a supervisor under one PWD Contractor and was earning a sum of Rs.25,000/- pm. On 27.04.2015 at about 12.15 hours, the claimant was riding his motorcycle viz., Hero Honda CD 100 SS bearing Reg.No.PY 01 M 8715 in Chinnasubraya Pillai Street from North to South. While he was trying to turn eastern direction towards Uppalam and was passing on the junction of Subbaya Salai and Pathar sahib street, opp. Kala Hotel, at that time, the first respondent drove the motor bike viz., TVS star City bearing Reg No.PY 01 AG 7723 in a rash and negligent manner and dashed against the claimant. In the impact, the claimant sustained comminuted anterior barton fracture in left forearm with multiple injuries all over the body and immediately he was taken to Government General Hospital, Pondicherry and thereafter he had taken treatment at Saikirupa hospital, Pondicherry as the injuries sustained are grievous. During the course of his hospitalization, he had also underwent surgery over his wrist of left hand and a rod was fixed in the wrist. It is stated that the claimant was hospitalized as an inpatient from 30.04.2015 to 04.05.2015. Therefore, for the injuries sustained in the accident, the claimant had filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation.

4.The appellant / Insurance Company opposed the claim petition mainly on the ground that the first respondent drove the vehicle without valid driving licence and as there is a clear violation of policy conditions by the first respondent, the Insurance Company cannot be called upon to pay compensation to the claimant. The appellant/Insurance Company also denied the age and income of the claimant / first respondent and therefore he prayed for dismissal of the claim petition.

5.Before the Tribunal, the claimant has examined himself as PW1 and Exs.P1 to P10 were marked on the side of the claimant. The Disability Certificate was marked as Ex.X1 as Court Document. On behalf of the Insurance Company, one Saravanan was examined as D.W.1. Exs.R1 to R3 were marked on the side of the Insurance Company.

6.The Tribunal on analyzing the oral and documentary evidence had held that the accident had occurred due to rash and negligent driving of the second respondent herein, whose vehicle is insured with the appellant Insurance Company. Therefore, the Tribunal held that the appellant Insurance Company is liable to pay compensation to the claimant. As regards the quantum, the Tribunal has taken note of the medical records, particularly, the Disability Certificate, issued by the Medical Board where it is stated that the claimant has suffered 5% disability, as per Ex.X1. Therefore, the Tribunal awarded a sum of Rs.3,000/- per percentage of disability and thereby awarded a total sum of Rs.15,000/- for 5% disability. For pain and sufferings, a sum of Rs.25,000/- was awarded and a sum of Rs.47,500/- was awarded for medical expenses based on Ex.P6 medical bills. For loss of income during the period of treatment, the Tribunal has awarded a sum of Rs.3,000/-. The Tribunal has awarded a sum of Rs.25,000/- separately towards Transportation and Extra nourishment. For Attender charges, a sum of Rs.10,000/- was awarded and in all, a sum of Rs.1,77,500/- was awarded as compensation by the Tribunal. Assailing the award passed by the Tribunal, the appellant/Insurance Company has come up with the present appeal.

7.The learned counsel for the appellant would contend that when the first respondent has no valid licence for driving a vehicle, calling upon the appellant Insurance Company to pay compensation to the claimant is totally injustice. Even though a specific defence was raised by the appellant that the first respondent did not possess a valid driving licence, the Tribunal has taken note of Ex.P2, photocopy of the driving licence of the first respondent/driver of the vehicle and given a finding that the first respondent was having valid driving license. According to the appellant, this finding of the Tribunal is factually incorrect inasmuch as Ex.P2 is a Light Motor Vehicle (LMV) licence which will not confer any right to the appellant to drive the two wheeler. In this context, the learned counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in Beli Ram vs. Rajinder Kumar and another (Civil Appeal No. 7220-7221 of 2011) dated 23.09.2020. In that case, the first respondent therein met with an accident on 20.05.1999 while driving a truck owned by the appellant therein, under whom he was gainfully employed. However, his licence to drive the truck had expired three months before the accident. The Honourable Supreme Court therefore had an occasion to consider the extent of care or diligence required to be taken by the employer or insured while employing a driver. Ultimately, it was held that if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the Insurance Company would no longer be liable to pay compensation. By pointing out the above decision, the learned counsel contended that Ex.P2, LMV licence issued to the first respondent in this case will not authorise or permit him to drive the two wheeler belonged to the second respondent herein and therefore, when there is a violation of policy condition, the Insurance Company cannot be mulcted with the liability to pay compensation. The learned counsel would also contend that the amount of compensation awarded by the Tribunal at Rs.25,000/- for Extra Nourishment, Rs.25,000/- towards transportation charges and Rs.25,000/- for pain and sufferings are excessive and they warrant interference by this Court.

8.On the above contention of the learned counsel for the appellant/Insurance Company, this Court heard the learned counsel for the respondents who justified the award passed by the Tribunal and prayed for dismissal of this appeal.

9.This Court heard the learned counsel appearing on either side and perused the materials placed on record.

10.Admittedly, it is a case of injury. What is questioned here is that the first respondent, driver of the vehicle did not possess a valid driving licence. Ex.P2, Light Motor Vehicle (LMV) licence will not authorise him to drive the two wheeler. However, the Tribunal has specifically given a finding that the first respondent, driver of the vehicle was in possession of driving license at the time of accident, but the appellant has not filed any documentary evidence to disprove the same. The fact remains that the first respondent was in possession of a Light Motor Vehicle. The licence was very much in existence on the date of accident. However, with the LMV licence, the first respondent ought not to have driven the two wheeler - Star City bike. Merely because the first respondent driven the two wheeler with a LMV licence, per se it would not preclude him from getting compensation from the Insurance Company. It is not the case of the appellant-Insurance company that Ex.P2 produced by the first respondent is fake or invalid. Therefore, even assuming that there is a violation of policy condition, the Insurance Company can at the best pay the compensation amount to the injured and later recover it from the owner of the two wheeler.

11. As far as the quantum of compensation, the claimant was aged 42 years at the time of accident and he has been hospitalized for about 7 days, during which he had underwent surgery in his left hand wrist. For medical expenses, the Tribunal has awarded a sum of Rs.47,500/- based on medical bills. For disability, the Tribunal awarded a sum of Rs.15,000/- at the rate of Rs.3,000/- per percentage of disability. Similarly, for pain and sufferings and extra nourishment, the Tribunal has awarded a sum of Rs.25,000/- each in and around the Tribunal has totally awarded as sum of Rs.1,77,500/- under various heads, which in the opinion of this Court, cannot be said to be exorbitant. The compensation awarded by the Tribunal is proportionate to the nature of injuries sustained by the claimant, the loss suffered by the claimant on account of non employment for a period of six months and the treatment taken for about a week as inpatient. Having regard to the above common disputed facts, this Court is of the opinion that the award passed by the Tribunal is just and

reasonable, which does not require any interference by this Court.

12.In the result, this Civil Miscellaneous Appeal is disposed of. The award passed by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal together with interest at 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment at the first instant and recover the same from the 2nd respondent/owner of the vehicle. On such deposit, the first respondent/claimant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Additional Subordinate Judge,
   Presiding Officer,
   Puducherry.

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

+1cc to Mr.T.Ananthasekar, Advocate, S.R.No.59840

C.M.A.No.1834 of 2018

EV(CO)
RGA(21/04/2022)