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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.1518 of 2020

and

C.M.P.No.11209 of 2020

M/s.Bharti AXA General Insurance Co.Ltd.,
First Floor, Ferns Icon, Survey No.28,
Doddanakkundi Village, K.R.Puram Hobli,
Bangalore - 37,
(Policy No.FPV/S0532615/41/06/B1411M
Period of Insurance 18.06.2012 to 17.06.2013

... Appellant

Vs.

1. Narayanan
2. Roshan Jain

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.12.2019 in M.C.O.P.No.1679 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.D.Ramesh Kumar
for R1

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed against the award dated 07.12.2019 in M.C.O.P.No.1679 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri.

2. The appellant is the 2nd respondent in M.C.O.P.No.1679 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri. The first respondent herein 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 05.08.2012.



3. On 05.08.2012, the claimant was riding his two wheeler bearing Registration No.TN-29-AH-9745 at about 11:15 a.m from Velichandhai to Royakkottai road. While nearing Venkatachalapathi temple, the claimant turned the vehicle towards the left, to return to Velichandhai. Suddenly the driver of the Hyundai Verna Car came in the opposite direction, dashed against the claimant and caused the accident. Due to the sudden impact, the claimant sustained greivous injuries on the right side head, right eye, right leg to the ankle, below the right hand writst. Immediately, after the accident, the claimant was taken to the Government Hospital, Palacode and then to Saint Johnson Hospital, Bangaluru and admitted as an inpatient for treatment. Prior to the accident, the claimant was hale and healthy and he was a retired employee from the Agricultural Department. At the time of accident, he was doing agricultural work and earning a monthly sum of Rs.10,000/-. Now, due to the permanent disability, the claimant is not able to continue his work. Thus he lost his earning power completely. The Claimant suffered a great mental shock and pain and suffering due to the accident apart from the permanent disability. The claimant has assessed the compensation under various heads and the total compensation is heavy but he has restricted the claim only to the tune of Rs.10,00,000/-. Magendhira Mangalam Police registered an FIR against the driver of the Hyundai Verna Car in Cr.No.240/2012 under Section 279, and 337 IPC.

4. The 2nd respondent-owner of the car remained exparte before the Tribunal.

5. The appellant-Insurance Company, insurer of the car denied all the averments made by the claimant. The appellant denied the manner of accident as alleged by the claimant. The Tribunal has erroneously held that the accident has occurred only due to the rash and negligent driving of the car belonging to the 2nd respondent. The driver of the car was driving slowly and carefully adhering to the traffic rules but the claimant had suddenly turned his two wheeler and dashed against the passing car and invited the accident. At the time of accident, the claimant did not possess driving license which is in violation of the policy conditions and Motor Vehicles Act, and the same was proved by the second respondent who was examined as RW3. When the claimant is the tort feasor he cannot claim compensation from the appellant/Insurance Company. In any event, the quantum of compensation claimed by the claimant is highly excessive and therefore, the appellant prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and ten documents were marked as Exs.P1 to P10. The appellant-Insurance Company examined one Roshan Jain as R.W.1, Singaram as R.W.2 and Durai as R.W.3 and marked three documents as Exs.R1 to R3.

7. The Tribunal, considering the pleadings, and oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the car belonging to the 2nd respondent herein and directed the appellant/Insurance Company to pay a sum of Rs.3,75,678/- as compensation to the claimant.

8. Against the said award dated 07.12.2019 in M.C.O.P.No.1679 of 2014, the appellant/Insurance Company has come out with the present appeal.

9. Though notice has been served on the second respondent and his name is printed the cause list, there is no representation on behalf of the second respondent either in person or through counsel.

10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the entire materials on record.

11. From the materials on record, it is seen that the claimant did not possess valid license and he was 70 years old on the date of accident and that apart, FIR has been registered and closed as further action dropped. The Hyundai Verna Car was plying from Rayakkottai road to Velichandhai and that in the middle of the road, the claimant turned in his vehicle towards left, which dashed against the car and caused the accident. From the rough sketch, it is very clear that the accident was caused only due to the claimant and not because of the fault of the car driver. The fact that the claimant did not possess a valid license and was riding the motor cycle on the wrong direction, and caused the accident and suffered injuries are not in dispute. A perusal of the Rough Sketch proves that the driver of the car is not at all responsible for the accident and that the claimant alone caused the accident, by going in a wrong direction. It is no doubt true that the closure of FIR cannot be a ground to hold that the Tribunal cannot do the exercise of finding the truth in the matter. The claimant has taken support of the decision rendered by this Court in the case of The Managing Director, Tamil Nadu State Transportation Corporation Ltd., (Villupuram) Vs Nandhini reported in 2016 (2) TAN MAC 179. However, the principles laid down therein has to be compared to



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the facts of this case. Closure of FIR cannot be a ground for the Tribunal to grant the relief with folded hands. The Tribunal, having rendered a finding that from the rough sketch it was clear that the claimant came in the way of the first respondent and the accident was caused by him, ought not to have answered the other issues in favour of the claimant. The evidence tendered by RW2 is very clear that the driver of the car was not at all responsible for the accident and the relevant paragraphs are extracted below.

"The petitioner in this petition has filed Ex.P1 - FIR in Cr.No.240/2012 on register at Magendhiramangalam Police Station u/s 279, 337 IPC on the driver of Hyundai Verna Car, to prove that the accident occurred due to the rash and negligence of the 1st respondent's driver. R1 examined as RW1 who deposed that he was not rash and negligent, it is the petitioner who was rash and negligent. To prove this version RW2 Sub Inspector of police, Mahendramangalam Police Station filed the rough sketch and charge sheet. The rough sketch shows that the petitioner was in the way of R1 and so is he accident. Further the FIR was closed as "Further action dropped" as the Investigating Officer found the fault on the petitioner. The R2 was examined as RW3 had filed the MV report of the petitioner's TVS to show that the petitioner never possessed valid license to drive. There was no eyewitness to depose that R1 was not rash and negligent. The legislation provides the victim to claim his compensation on the vehicle at his choice. So the petitioner who never possessed license is not a hurdle to this petition. The same doesn't prove that the petitioner was rash and negligent. Thus the claimant established his case on the touchstone of preponderance of probability through the filing of FIR. Thus the above FIR proved that the R1's rash and negligent caused accident and so FIR as the proof of the accident and both these vehicles are involved, therefore, after perusing the oral and documentary evidence, this Tribunal finds that the accident occurred only due to the rash and negligent act of the R1. Thus Point No.1 is answered accordingly".

12. I find much force in the contention of the learned counsel appearing for the appellant/Insurance Company and allow the appeal and that the claimant would be entitled to only no fault liability of Rs.25,000/- only for the accident and the other heads awarded by the Tribunal are set aside. The claimant did not possess driving license to drive the vehicle. Therefore,



the Insurance Company is not liable to pay compensation to the claimant. The ratio in the judgment of the Hon'ble Apex Court referred to above is not applicable to the facts of the present case. In view of the same, the award of the Tribunal fastening negligence and quantum on the appellant is hereby set aside. No costs. Consequently connected miscellaneous petition is also closed.

13. In the result, appeal is allowed and the compensation awarded by the Tribunal at Rs.3,75,678/- is hereby set aside and the award amount of Rs.25,000/- along with interest @ 7.5% from the date of petition to till the date of deposit only is liable under no fault liability. At the time when the appeal was admitted, the appellant/Insurance Company has filed Miscellaneous Petition seeking stay of execution of the decree. This Court granted stay on condition that the appellant should deposit 50% of the award amount to the credit of M.C.O.P.No.1679 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri. Now the nominal compensation of Rs.25,000/- is awarded to the claimant, therefore the appellant is permitted to withdraw the balance award amount lying on the file of M.C.O.P.No.1679 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri by making appropriate application. Similarly the claimant is also permitted to withdraw Rs.25,000/- by making necessary application in such regard. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dpq

To
The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Dharmapuri.

+1cc to Mr.S.Arunkumar, Advocate SR.No.37962
+1cc to Mr.D.Rameshkumar, Advocate SR.No.37887

C.M.A.No.1518 of 2020
and

C.M.P.No.11209 of 2020

VSN II(CO)
GN(04/01/2022)