IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1095 of 2014
and M.P.No.1 of 2014

Branch Manager,
New India Assurance Company Limited,
Mahatma Gandhi Street,
Pondicherry. ... Appellant/2nd Respondent

Vs.

1.Kamalam ...1st Respondent/Petitioner

2.Prabakaran ...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 01.08.2011 made in M.C.O.P.No.571 of 2009, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Tindivanam.

For Appellant : Mr.K.Vinod
for M/s.Elveera Ravindran

For R1 : Mr.A.Adhichakravarthy
for M/s.T.Sai Krishnan

J U D G M E N T

(The matter is heard through “Video Conferencing/Hybrid mode”.)

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 01.08.2011 made in M.C.O.P.No.571 of 2009, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Tindivanam.

2.The appellant is the 2nd respondent in M.C.O.P. No.571 of 2009, on the file of the Principal Sub Court, (Motor Accidents Claims Tribunal), Tindivanam. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.06.2009.

3.According to the 1st respondent, on the date of accident, when she was returning to her house after purchasing medicine from the medical shop on the extreme left side of the road, a rider of the Motorcycle bearing Registration No.PY-01-W-3094 owned by the 2nd respondent drove the same from Kalapet to Pondicherry near Murugan Koil in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries. The accident occurred only due to rash and negligent riding of Motorcycle owned by the 2nd respondent. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner and appellant as insurer of the offending vehicle respectively.

4.The 2nd respondent, owner of the Motorcycle, remained exparte before the Tribunal and notice to 2nd respondent is dispensed with.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, on the date of accident, the rider of the Motorcycle owned by the 2nd respondent rode the vehicle in a rash and negligent manner without possessing valid and effective driving license and violated the policy conditions. The rider possessed only LMV license and there was no specific endorsement in the license to ride the Motorcycle. Hence, the appellant is not liable to pay any compensation and prayed for dismissal of the claim petition against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined Dr.Sekar as P.W.2 and marked 8 documents as Exs.P1 to P8. The appellant examined one Ramesh, Motor Vehicle Inspector in R.T.O as R.W.1 and marked 3 documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of Motorcycle owned by the 2nd respondent and directed the appellant as insurer of the said vehicle as well as the 2nd respondent to pay a sum of Rs.83,000/- as compensation to the 1st respondent.

8.Against the said award dated 01.08.2011 made in M.C.O.P.No.571 of 2009, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 2nd respondent. The Tribunal failed to appreciate the details relating to the Driving License marked as Ex.R2, which shows that the rider is not authorized to ride the Motorcycle. The 2nd respondent has violated the policy conditions by permitting the rider to ride the vehicle without valid and effective driving license. For such violation of policy condition and rules of the Motor Vehicles Act, the appellant is not liable to indemnify the 2nd respondent. The Tribunal erred in awarding a sum of Rs.49,000/- towards permanent disability by assessing the disability at 49% and awarding a sum of Rs.25,000/- towards pain and suffering, without any basis. In any event, the Tribunal ought not to have fixed the liability on the appellant and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering all the materials on record in proper perspective, rightly held that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 2nd respondent. In the accident, the 1st respondent suffered severe injuries and P.W.2 Doctor assessed the 1st respondent and certified that she suffered 49% disability. The amounts awarded by the Tribunal for the disability and discomfort suffered by the 1st respondent is meagre and prayed for dismissal of the Civil Miscellaneous Appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

12.From the materials on record, it is seen that it is the case of the 1st respondent that on 26.06.2009, after purchasing medicines, while she was walking on the extreme left side of the road, the rider of the Motorcycle owned by the 2nd respondent rode the same in a rash and negligent manner and dashed against the 1st respondent and caused the accident and she sustained injuries as mentioned in the claim petition. To substantiate the same, the 1st respondent examined herself as P.W.1 and examined Dr.Sekar as P.W.2. The 1st respondent, as P.W.1, deposed that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 2nd respondent. It is the case of the appellant that accident did not occur due to the negligence of the rider of the Motorcycle. It is the further case of the appellant that the 2nd respondent did not possess driving license to ride the Motorcycle at the time of accident. He possessed driving license only to drive the Light Motor Vehicle. To prove this, the appellant examined R.W.1. The appellant did not examine any eye-witness to prove their case and to disprove the evidence of P.W.1. The appellant examined R.W.1 – Motor Vehicle Inspector who deposed that R.T.O. issued license to the rider of the Motorcycle to drive only Light Motor Vehicle and marked Exs.R1 and R2. The Tribunal considering the evidence of 1st respondent as R.W.1, in the absence of any contra evidence, held that the accident occurred only due to rash and negligent riding by rider of Motorcycle owned by the 2nd respondent. There is no error in fixing the negligence on the rider of the Motorcycle.

13.It is the contention of the learned counsel appearing for the appellant that the 2nd respondent did not possess driving license to drive the Motorcycle. R.W.1 – Motor Vehicle Inspector from R.T.O has deposed that the 2nd respondent was issued driving license to drive only Light Motor Vehicle. From the evidence of R.W.1, it is seen that the 2nd respondent did not possess driving license to drive the Motorcycle and he was issued driving license only to drive Light Motor Vehicle. Even if rider of the Motorcycle did not possess driving license to drive the Motorcycle, the appellant-Insurance Company cannot be exonerated absolutely. A Three Judges Bench of the Hon'ble Apex Court, in the judgment reported in (2004) 3 SCC 297 [National Insurance Co. Ltd., Vs. Swaran Singh and others], held that non-possession of driving license by the person who caused the accident will not exonerate the Insurance Company absolutely. The Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle, as the Motor Vehicles Act is beneficiary legislation and the victim/claimants are third parties and they must enjoy the fruits of the award. In view of the judgment of the Hon'ble Apex Court, the award of the Tribunal is modified, directing the appellant-Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

14.As far as the quantum of compensation is concerned, the 1st respondent proved the injuries sustained in the accident by examining herself as P.W.1 and also by examining P.W.2 Doctor. The Tribunal considering the evidence of P.W.1 and P.W.2 and documents marked by the 1st respondent, awarded compensation under different heads, which are not excessive, warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.83,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, 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.561 of 2009 at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the award amount, determined by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gsa
To

1.The Principal Subordinate Judge,
(Motor Accidents Claims Tribunal),
Tindivanam.

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

+1cc to Mrs.Elveera Ravindran, Advocate Sr.63577
+1cc to M/s.T.Saikrishnan, Advocate Sr.64124

C.M.A.No.1095 of 2014

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