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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1648 of 2014
and M.P.No.1 of 2014

M/s.National Insurance Co. Ltd.
Having its issuing Office at
New No.43, Venkatakrishna Road
R.S.Puram, West
Coimbatore - 641 002.
Having its Regional Office at
Coimbatore Divisional Office - III
94/34, Second floor
Dr.Nanjappa Road
United Shopping Complex
Coimbatore - 641 018.

.. Appellant/3rd Respondent

Vs.

1.S.Sivakumar
2.C.Subramani
3.S.Chandrasekaran

...1st Respondent/Petitioner

..2nd & 3rd Respondents
/1st and 2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 28.01.2014 made in M.C.O.P.No.190 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

For appellant : Mr.J.Chandran

For R1 : Mr.Lokesh
for Mr.MA.P.Thangavel

For R2 and R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 28.01.2014 made in M.C.O.P.No.190 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.



2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.190 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore. The 1st respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2012.

3.According to the 1st respondent, on the date of accident i.e., on 04.11.2012, at about 3.15 p.m., while he was riding the motorcycle bearing Registration No.TN-37-BC-5475 from East to West direction in front of Wetland (Nursery Farm), Thondamuthur Road, Poosaripalayam in Coimbatore, the 2nd respondent, the rider of Honda Activa motorcycle bearing Registration No.TN-37-AS-0965 belonging to the 3rd respondent, rode the same on the extreme right side of the said road in a rash and negligent manner, hit against the 1st respondent, who was riding his motorcycle in the opposite direction and caused the accident. Due to the said impact, the 1st respondent was thrown away on the road with his motorcycle and sustained multiple injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the rider, owner and insurer of the Honda Activa motorcycle, the respondents 2, 3 and appellant/Insurance Company respectively.

4.The respondents 2 and 3, rider and owner of the Honda Activa motorcycle respectively, filed counter statement stating that the 1st respondent failed to add the owner and insurer of the motorcycle driven by him as parties to the claim petition. Hence, the claim petition is hit by non-joinder of necessary parties. While the 2nd respondent was riding the motorcycle from West to East direction in a moderate speed on the left side of the road, the 1st respondent alone rode his motorcycle from East to West direction in a rash and negligent manner, came to the wrong side of the road and hit the two wheeler driven by the 2nd respondent. The 1st respondent has admitted his act. F.I.R. was belatedly lodged on 07.11.2012 and hence, the 1st respondent alone is responsible for the accident. The Insurance Policy was in force at the time of accident and therefore, the appellant/Insurance Company is liable to pay compensation to the 1st respondent. The respondents 2 and 3 have also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

5.The appellant/Insurance Company, insurer of the Honda Activa motorcycle filed counter statement denying the averments



made by the 1st respondent and stated that the 2nd respondent did not possess valid and effecting driving license at the time of accident and he was under the influence of alcohol, which is in violation of terms and conditions of the policy. The 2nd respondent is not responsible for the accident. The 1st respondent alone rode the motorcycle in a rash and negligent manner and invited the accident. At the time of accident, the 1st respondent was under the influence of alcohol. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.S.Krishnaraj, was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. X-rays were marked as M.O.1 and M.O.2. The appellant/Insurance Company examined the 2nd respondent, rider of the Honda Activa motorcycle as R.W.1, one K.S.Kannan, Administrative Officer of the Insurance Company as R.W.2, Dr.Rahuram Ayya as R.W.3 and marked four documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent, rider of the Honda Activa motorcycle belonging to the 3rd respondent and directed the appellant/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.5,44,800/- as compensation to the 1st respondent.

8.Against the said award dated 28.01.2014 made in M.C.O.P.No.190 of 2013, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of R.W.3/Doctor and Ex.R3/Accident Register and Ex.R4/medical treatment case sheet, through which, the appellant proved that 2nd respondent, the rider of the vehicle insured with appellant, was under the influence of alcohol at the time of accident. The Tribunal ought to have exonerated the appellant from its liability and held that 3rd respondent, owner of the vehicle is liable to pay compensation. The 1st respondent has not produced any continuous medical treatment records. The Tribunal erroneously accepted the evidence of P.W.3/Doctor, adopted multiplier method and also percentage method and granted



compensation in addition to the amount granted for loss of income to the 1st respondent. The total compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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10. The learned counsel appearing for the 1st respondent contended that on the date of accident, while the 1st respondent was riding his motorcycle bearing Registration No.TN-37-BC-5475, the 2nd respondent rode the Honda Activa motorcycle bearing Registration No.TN-37-AS-0965 in a rash and negligent manner and dashed against the motorcycle, in which 1st respondent was riding. F.I.R. was registered against 2nd respondent. The 2nd respondent pleaded guilty and admitted his negligence before the criminal Court. R.W.3/Doctor during his cross-examination admitted that no blood test was conducted for the 2nd respondent to prove the alcohol content in the blood and that the accident occurred due to consumption of alcohol. The Tribunal considering entire materials and evidence of R.W.3, held that accident occurred only due to negligence of 2nd respondent, contention of appellant that 2nd respondent was under the influence of alcohol was not proved and directed the appellant to pay the compensation. There is no error in the said award of the Tribunal. In the accident, the 1st respondent suffered multiple injuries, he lost entire vision in his right eye and fracture in the right shoulder. To prove the nature of injuries and disability, the 1st respondent examined the Doctor as P.W.2 and marked disability certificate as Ex.P14. The 1st respondent was working as a Sales Representative at the time of accident and was earning a sum of Rs.7,000/- per month. The Tribunal considering the nature of disability and nature of work of the 1st respondent, granted compensation towards future loss of earning capacity by adopting multiplier method for 30% disability for loss of vision in the right eye and granted compensation for 5% partial permanent disability by adopting percentage method. The total compensation granted by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

12. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13. From the materials on record, it is seen that it is the case of the 1st respondent that 2nd respondent rode his two



wheeler bearing Registration No.TN-37-AS-0965 in a rash and negligent manner and dashed against the motorcycle bearing Registration No.TN-37-BC-5475, in which 1st respondent was riding and caused the accident. In the accident, 1st respondent sustained multiple injuries and claimed compensation for the injuries. To prove the said contention, the 1st respondent examined himself as P.W.1 and Doctor, who treated him, as P.W.2, marked documents and proved his case. It is the case of the appellant that 2nd respondent was under the influence of alcohol at the time of accident and hence, the appellant is not liable to pay any compensation to the 1st respondent. Only the 3rd respondent, owner of the offending vehicle is liable to pay compensation. To prove the case, the appellant examined R.W.3/Doctor, who treated the 2nd respondent, rider of the offending vehicle and marked documents. R.W.3 in his evidence deposed that 2nd respondent has consumed alcohol at the time of accident as per Exs.R3/Accident Register and R4/case sheet. But in cross-examination, he deposed that no blood test was conducted for 2nd respondent to ascertain percentage of alcohol content in blood. The Tribunal in the absence of blood test, did not accept the case of the appellant, holding that mere smelling of alcohol, cannot be decided that 2nd respondent was under the influence of alcohol and due to the same, he lost control and caused the accident. The Tribunal considering the above facts, held that the 2nd respondent was responsible for the accident, 3rd respondent, owner of the vehicle and appellant as insurer is liable to pay compensation to the 1st respondent. There is no error in the said finding of the Tribunal fixing negligence on the 2nd respondent and liability on the appellant/Insurance Company.

14.As far as quantum of compensation is concerned, the Tribunal considering the evidence of P.W.2/Doctor that 1st respondent lost total vision in the right eye, age and avocation of the 1st respondent, adopted multiplier method and granted compensation for 30% disability by fixing monthly income at Rs.6,000/-. It is the case of the 1st respondent that he was working as Sales Representative and was earning a sum of Rs.7,000/- per month. The accident has occurred in the year 2012. The monthly income fixed by the Tribunal is not excessive. In addition to the above, the Tribunal considering the disability certificate Ex.P14, granted a sum of Rs.15,000/- towards partial permanent disability at the rate of Rs.3,000/- per percentage for 5% disability and Rs.18,000/- towards loss of income. The 1st respondent has taken treatment as in-patient in the hospital and underwent surgeries. The Tribunal has not granted any amount towards attendant charges. The total compensation awarded by the Tribunal are not excessive warranting interference by this Court.



15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,44,800/- 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 entire award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge
Coimbatore.

Copy to:The Section Officer
VR Section
High Court,Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.64013
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.64166

C.M.A.No.1648 of 2014
and M.P.No.1 of 2014

CP(CO)
CB(05/01/2022)