



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.06.2021	DELIVERED ON: 23.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.3494 OF 2014

Minor.P.Satheesh .. Appellant/Petitioner
(Represented by his natural guardian/
Father, P.Periyasamy)

.Vs.

1.M.Muniraj

2.The Manager,
The Royal Sundaram Alliance Insurance Company Limited,
No.46, Whites Road, Chennai - 600 014.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.07.2008 made in M.C.O.P.No.142 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.S.Sathiaseelan

For R1 : No appearance

For R2 : Mr.M.B.Raghavan

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed against the award dated 03.07.2008 made in M.C.O.P.No.142 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.



2.The appellant is the claimant in M.C.O.P.No.142 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.06.2004.

3.According to appellant, on 12.06.2004 at about 10.45 A.M., he was waiting along with his Mother Parvathy near a bus stop at K.N.Savulur Diversion Road. At that time, when the appellant went to pass his natural call, the rider of the motorcycle bearing Registration No.TN 29 F 7618 who was driving the motorcycle on the Dharmapuri to Paupparapatti Main Road, drove the same in a rash and negligent manner at a high speed, lost his control and dashed against the appellant and caused the accident. In the accident, the appellant sustained fracture of femur bone in right leg and multiple grievous injuries all over the body. Immediately after the accident, the appellant was taken to Government Hospital, Dharmapuri and admitted as inpatient for three days and subsequently, he was taken to Nallampatty Bone Setting Hospital and thereafter he was taken to KIMS Hospital and Research Centre, Bangalore and has taken treatment as inpatient from 26.07.2004 to 30.07.2004. Further, he has taken treatment till filing of the claim petition. Therefore, the appellant filed the 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 motorcycle respectively.

4.The 1st respondent-owner of the motorcycle remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to 2nd respondent, at the time of accident, the rider of the motorcycle was riding the same slowly and carefully on the left side of the road and the appellant only suddenly emerged on the road for crossing the same and on seeing this, the rider blown horn sound and stopped the motorcycle and also shouted at him. Therefore, the appellant immediately turned back and tried to run, but lost his balance, slipped and fell down due to urgency. Therefore, the accident has occurred only due to the negligence on the part of the appellant and there is no negligence on the part of the rider of the motorcycle. In exact, the motorcycle has not even touched the appellant. The F.I.R. was lodged only on the basis of false complaint and hence, the 2nd respondent is not liable to pay any compensation to the



appellant. Further, the rider of the motorcycle was not having valid driving license at the time of accident. The motorcycle was not used for the purpose of the owner and also the rider of the motorcycle at the time of accident was not the employee of the insured. The motorcycle was not used in accordance with the provisions of the Motor Vehicles Act and the owner of the motorcycle breached the terms of the policy. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. The 2nd respondent denied the age, avocation, income, nature of injuries, disability and period of treatment taken by the appellant. The quantum of compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 2nd respondent-Insurance Company.

6.Before the Tribunal, the Father and Mother of the appellant were examined as P.W.1 & P.W.2 respectively, Dr.Gandhi was examined as P.W.3 and 8 documents were marked as Exs.P1 to P8. On behalf of the 2nd respondent-Insurance Company, one Siththappan, Junior Assistant from Dharmapuri R.T.O. was examined as R.W.1 and one Vaitheeswaran, Official from 2nd respondent-Insurance Company was examined as R.W.2 and 4 documents were marked as Exs.R1 to R4.

7.Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the motorcycle belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.47,443/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent-Insurance Company.

8.Against the said award dated 03.07.2008 made in M.C.O.P.No.142 of 2005, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously exonerated the 2nd respondent-Insurance Company from its liability and directed the 1st respondent to pay the compensation. The Tribunal ought to have ordered pay and recovery as per the judgment of the Hon'ble Apex Court with respect to non-possession of driving license. The Tribunal come to a wrong conclusion that the 1st respondent-owner of the motorcycle has permitted the rider of the motorcycle to drive the motorcycle knowing willfully that the rider of the motorcycle was not possessing valid driving license. The Tribunal failed to appreciate the well settled principle of law, when the owner of the vehicle has not willfully placed the vehicle with unlicensed person and the offending vehicle covered by Insurance,



the Insurer is liable to pay the compensation and recover the same from the owner or driver of the offending vehicle. The compensation awarded by the Tribunal at Rs.47,443/- is very meagre. The Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability for 35% of disability instead of Rs.1,000/- per percentage of disability. The Tribunal failed to award any amount towards extra nourishment and transportation. The amount awarded by the Tribunal towards pain and sufferings is meagre. In support of his contention, the learned counsel appearing for the appellant relied on the following judgments and prayed for enhancement of compensation and also for a direction to the 2nd respondent to pay the compensation.

(i) A judgment of the Hon'ble Apex Court reported in (2004) 3 SCC 297, (National Insurance Company Limited Vs. Swaran Singh), paragraph Nos.4, 68, 77 to 100.

(ii) A judgment of the Hon'ble Apex Court reported in (2008) 12 SCC 426, (National Insurance Company Limited Vs. Geeta Bhat and others), paragraph Nos.5 to 16.

(iii) A Division Bench judgment of this Court reported in 2009 (2) TNMAC 103 (DB), (United India Insurance Company Limited Vs. S.Saravanan and another), paragraph Nos.5 to 22.

(iv) A judgment of Madurai Bench of this Court reported in 2010 (1) TNMAC 123, (ICICI Lombard General Insurance Company Limited Vs. M.Rakkathal and others), paragraph Nos.6 to 26.

(v) A judgment of the Hon'ble Apex Court reported in (2003) 2 SCC 274, (Nagappa Vs. Gurudayal Singh), paragraph Nos.7 to 10 & 13 to 21.

(vi) A judgment of the Hon'ble Apex Court reported in (2008) 3 SCC 379, (Andhra Pradesh State Road Transport Corporation Vs. M.Ramadevi and others), paragraph Nos.7 to 9.

(vii) A judgment of this Court reported in 2011 (2) TNMAC 40, (D.Henry Vs. S.Latha and another), paragraph Nos.22 to 25.

(viii) A judgment of the Hon'ble Apex Court reported in (2020) 4 SCC 413, (Kajal Vs. Jagdish Chand), paragraph Nos.20 to 29 & 33.

(ix) A judgment of the Hon'ble Apex Court reported in (2014) 14 SCC 396, (Mallikarjun Vs. National Insurance Company Limited), paragraph Nos.3 to 12.



(x)A judgment of this Court reported in (2015) 1 SCC 539, (Kumari Kiran Vs. Sajjan Singh and others), paragraph Nos.12 to 14.

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10.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the rider of the motorcycle was not possessing valid driving license, has rightly held that the 1st respondent-owner of the motorcycle is liable to pay the compensation and exonerated the 2nd respondent-Insurance Company from its liability. The 2nd respondent is not liable to pay any compensation to the appellant. The Tribunal considering the evidence of P.W.3/Doctor, nature of injuries and Ex.P7/disability certificate, has awarded a sum of Rs.47,443/- as compensation to the appellant which is not meagre and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13.It is the case of the appellant that at the time of accident, the rider of motorcycle belonging to 1st respondent was not possessing valid driving license and the Tribunal erroneously directed the 1st respondent to pay the compensation and exonerated the 2nd respondent-Insurance Company from its liability. It is the further case of the appellant that the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent. From the materials on record, it is seen that the rider of the motorcycle was having only Learner's License to ride the motorcycle. The 2nd respondent-Insurance Company proved the same by examining one Siththappan, Junior Assistant from Dharmapuri R.T.O. as R.W.1 and also one Vaitheeswaran, Official from 2nd respondent as R.W.2. The 2nd respondent also filed Ex.R3/Motor Vehicle Inspector's Report to prove the same. Further, summons were sent by the Tribunal to the 1st respondent and also to the rider of the motorcycle to produce the driving license of the rider of the motorcycle. Thereafter also, neither the rider of the motorcycle nor the 1st respondent has produced the driving license of the rider of the motorcycle. It is evident from the records that on the date of accident the



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rider of the motorcycle was not possessing valid driving license. The Tribunal considering the same, held that the 1st respondent has violated the policy conditions and the Motor Vehicles Act by permitting a person who was not possessing valid driving license to ride the motorcycle and directed the 1st respondent-owner of the motorcycle to pay the compensation to the appellant and exonerated the 2nd respondent-Insurance Company from its liability. The said finding of the Tribunal exonerating the 2nd respondent-Insurance Company from its liability is erroneous. It is well settled law that Learner's License is also a valid license. The Hon'ble Apex Court in the judgment reported in (2004) 3 SCC 297, cited supra, held that learner's license is a valid license. Further, as per the said judgment of the Hon'ble Apex Court, the Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent-owner of the motorcycle. In view of the judgment of the Hon'ble Apex Court, the portion of the award directing the 1st respondent to pay the compensation to the appellant is modified directing the 2nd respondent-Insurance Company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent-owner of the motorcycle.

14.As far as quantum of compensation is concerned, in the accident the appellant sustained deformity of right thigh, lacerated injury Rt.parietal skull 3 X 1 X 1 cm fracture of femur and multiple injuries all over the body. To prove the injuries and disability, the appellant examined himself as P.W.1 and examined Dr.Gandhi as P.W.3. P.W.3/Doctor examined the appellant and certified that appellant suffered 35% disability and issued Ex.P7/disability certificate to that effect. P.W.3/Doctor also deposed that due to the disability, the appellant could not able to walk for long distance, run, could not able to participate in the sports like other children, could not able to lift heavy objects, he will be finding difficulty in climbing upstairs and walking down the stairs and also he could not do any hard work. The Tribunal considering the evidence of P.W.3/Doctor and Ex.P7/disability certificate, awarded a sum of Rs.35,000/- for 35% disability at the rate of Rs.1,000/- per percentage of disability the same is meagre. As per the judgment of the Hon'ble Apex Court reported in (2014) 14 SCC 396, cited supra, the appellant is entitled to a sum of Rs.4,00,000/- as compensation for disability, pain and sufferings and loss of amenities. In view of the same, a sum of Rs.10,000/- awarded by the Tribunal towards pain and sufferings is liable to be set aside and it is hereby set aside. Further, the appellant has taken treatment in the Government Hospital, Dharmapuri as inpatient for 3 days,



thereafter at Nallampatty Bone Setting Hospital and further at KIMS Hospital and Research Centre, Bangalore as inpatient for 5 days from 26.07.2004 to 30.07.2004. The Tribunal has not awarded any amount towards attendant charges and future medical expenses. Considering the facts and circumstances of the case, nature of injuries, disability, period of treatment and the age of the appellant, the appellant is entitled to a sum of Rs.25,000/- each towards attendant charges and future medical expenses respectively. The Tribunal has not awarded any amounts towards extra nourishment and transportation. The appellant is entitled to a sum of Rs.25,000/- for extra nourishment and Rs.10,000/- for transportation. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is hereby confirmed.

15.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	35,000/-	4,00,000/-	Enhanced
2.	Pain and sufferings	10,000/-	-	Set aside
3.	Medical expenses	2,443/-	2,443/-	Confirmed
4.	Extra nourishment	-	25,000/-	Granted
5.	Transportation	-	10,000/-	Granted
6.	Attendant charges	-	25,000/-	Granted
7.	Future medical expenses	-	25,000/-	Granted
	Total	Rs.47,443/-	Rs.4,87,443/-	Enhanced by Rs.4,40,000/-

16.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.47,443/- is hereby enhanced to Rs.4,87,443/- together with interest at the rate of 7.5% per annum from the date of petition



till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court 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, to the credit of M.C.O.P.No.142 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri, at the first instance and recover the same from the 1st respondent. On such deposit, the Tribunal is directed to deposit the award amount in any one of the Nationalized Banks, till the minor appellant attains majority. On such deposit made by the Tribunal, the father of the minor appellant viz., P.Periyasamy is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee for the enhanced amount of compensation. No costs.

Sd/-
Assistant Registrar (CS IX)

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Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

Copy To

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

+1cc to Mr.S.Sathiaselvan, Advocate, S.R.No.35122

C.M.A.No.3494 of 2014

NR(CO)
CS/26/11/2021