



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2021

Pronounced on : 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.830 of 2014

and

M.P.No.1 of 2014

United India Insurance Co.Ltd.,
D.No.26, Chander Plaza, No.48, First Floor,
Arcot Road, Saligramam, Chennai-600 093.

Now at:

United India Insurance Co.Ltd.,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai-600 006.

.. Appellant/2nd Respondent

Vs.

1.Immanuveldoss
S/o.A.Vincent

... 1st Respondent/Petitioner

2.M.Boominathan
(Ex-parte in Trial Court, hence, given up)

..2nd Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decretal order dated 02.08.2013 made in M.C.O.P.No.1030 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee.

For Appellant	:	Mr.P.Sankaranarayanan
For R1	:	Mr.C.Prabakaran
R2	:	Set exparte in the Tribunal

JUDGMENT

(The case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed against the award dated 02.08.2013 made in M.C.O.P.No.1030 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee.



2.The appellant is the 2nd respondent in M.C.O.P.No.1030 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee. The first respondent filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.03.2009.

3.According to the 1st respondent/claimant, on 23.03.2009 at about 19.00 hours, when he was riding the motorcycle bearing Registration No.TN-09-AM-7447 belonging to the 2nd respondent on Kundrathur to Pallavaram Main Road and while going near Karaimanagar, met with an accident. Due to the impact, the 1st respondent sustained multiple grievous injuries. The 2nd respondent is the owner and the appellant is the insurer of the vehicle.

4.The 2nd respondent remained ex-parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement that the appellant has not received any claim from the 2nd respondent nor the 2nd respondent chosen to appear before Tribunal. It is reliably learnt from the police records as well as from investigation report that the 1st respondent had met with an accident while riding the motorcycle when his vehicle dashed against the another motor cycle bearing Registration No.TN-22-Q-2751 which was coming from the opposite direction. But, the 1st respondent has filed the above claim petition against his own vehicle's insurance company which he purchased from the 2nd respondent. As a tort-feasor, the claimant cannot maintain the above claim against 1st respondent against his own vehicle. Hence, the petition is liable to be dismissed.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.V.R.Subramaniam, was examined as P.W.2 and marked nine documents as Exs.P1 to P9. On the side of the appellant/Insurance Company, one P.Maharajan, was examined as R.W.1 and four documents were marked as Exs.R1 to R4.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent riding by the rider of the motorcycle belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,50,577/- as compensation to the first respondent/claimant.

8.Challenging the award of the Tribunal dated 02.08.2013 made in M.C.O.P.No.1030 of 2010, the appellant-Insurance Company has come out with the present appeal.

9.Mr.P.Sankaranarayanan, learned counsel appearing for the appellant submitted his arguments. As per his submission, the



injured victim is claimant before the Tribunal. The claim petition was filed under Section 163(A) of the Motor Vehicle Act. As per the claim petition, that on 23.03.2009, by around 19.00 hours, the claimant was riding the motorcycle bearing Registration No.TN-09-AM-7447, belonging to the 2nd respondent cautiously and slowly on the safer side of the Kundrathur to Pallavaram Main Road and while going near Karaima Nagar, involved in the accident. The injured was immediately taken to Deepam Hospital, then to Kamatchi Hospital, and later he was admitted as inpatient at Kumaran Hospital. The 1st respondent is the rider of the motorcycle, 2nd respondent is the owner and the appellant is the insurer of the said two wheeler. The learned Tribunal had fastened the liability on the appellant/Insurance Company. The appellant/Insurance Company is not liable to pay the compensation. The award by the Tribunal is to be considered made against the rider of the two wheeler.

10.For the injuries suffered by the claimant in M.C.O.P.No.1030 of 2010, the claimant is entitled only the amount under Section 163(A) of the Motor Vehicle Act. As per Insurance Policy, the driver cum owner of the vehicle alone is protected and for that claim, only a sum of Rs.1,00,000/- is the maximum to be awarded to the injured. The claimant stepped into the shoes of the 2nd respondent/owner of the vehicle. Therefore, he is entitled only to compensation under Section 163(A) of the Motor Vehicle Act. The learned counsel for the appellant/Insurance Company submitted that the owner of the vehicle had to seek his remedy elsewhere. Further, the learned counsel for the appellant/Insurance Company submitted that under Section 163 (A) of the Motor Vehicles Act, the claimant is entitled to Rs.15,000/- only during the evidence the 1st respondent, herein who was claimant before the Tribunal as P.W.1 had admitted in his cross examination that he had produced the vehicle from 2nd respondent. Therefore, the claimant is not the rider of the two wheeler or the pillion rider. He is the owner cum driver and he entered the shoes of the owner suppressing the said fact that he himself had filed the claim petition as he had driven the vehicle of 2nd respondent. The Tribunal failed to appreciate those facts available in evidence and had mechanically calculated the compensation and fastened the liability and ignored the provision of law, on the 2nd respondent/Insurance Company before the Tribunal, the appellant herein. Aggrieved by the same, the appellant had challenged the award and filed this appeal seeking to set aside the award of the Tribunal.

11.Per contra, Mr.C.Prabakaran, learned counsel appearing for the 1st respondent/claimant made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.



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

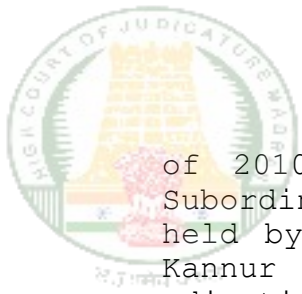
Point for Consideration:

Whether the award passed by the Tribunal, as against the provisions of Motor Vehicles Act and is liable to be set aside?

13. Perused the claim petition in M.C.O.P.No.1030 of 2010 and the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee.

14. On perusal of the same, it is found that the 1st respondent/claimant herein had deposed that he suffered injury while riding the two wheeler bearing Registration No.TN-09-AM-7447, belonging to the 1st respondent (as per the claim petition). In his cross examination, he admitted that he purchased the vehicle from the 1st respondent and if that be the case, he himself had entered the shoes of the owner of the two wheeler and in cases where the driver cum owner of the vehicle is injured, as per insurance policy, only a sum of Rs.1,00,000/- is the maximum to be awarded to the injured. Therefore, the claimant is not entitled to any compensation since the compensation awarded to the 3rd parties, and the claimant not being 3rd party cannot claim the compensation under 163(A) of the Motor Vehicles Act, then without going into the proof of negligence, the Tribunal can award maximum of Rs.15,000/- only and it need not consider evidence regarding proof of negligence. Therefore, the arguments put forth by the learned counsel for the appellant is acceptable as the petition is filed under Section 163(A) of the Motor Vehicles Act. Therefore, the award passed by the Tribunal in M.C.O.P.No.1030 of 2010 dated 02.08.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee, is found to be against the provisions of the Motor Vehicle Act and the same is liable to be set aside.

15. Accordingly, point for consideration is answered in favour of the appellant/Insurance Company and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,50,577/- is hereby reduced to Rs.15,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant being the insurer of the vehicle is directed to deposit the reduced 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.1030 of 2010 dated 02.08.2013 made in M.C.O.P.No.1030



of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the reduced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 25746

C.M.A.No.830 of 2014

GMI (CO)
GN(17/11/2021)