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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4763 of 2019

and

C.M.P.No.27417 of 2019

Divisional Manager,
National Insurance Company Limited,
Divisional Office VII,
No.50, Janbadh,
New Delhi - 110 001.

... Appellant/2nd Respondent

Vs.

1.Moorthy (Dumb and Deaf) ...1st Respondent/Petitioner
(Represented by his next friend / Brother, Selvam)
2.Sankar ... 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 14.08.2019 made in M.C.O.P.No.740 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.Vadivel

For Respondents : No appearance

J U D G M E N T

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

2.This Civil Miscellaneous Appeal has been to set aside the award dated 14.08.2019 made in M.C.O.P.No.740 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

3.The appellant is the 2nd respondent in M.C.O.P.No.740 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. The 1st respondent filed the 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 14.11.2008.



4. According to 1st respondent, on 14.11.2008 at about 08.00 A.M., while he was standing near Sivan Kovil under the Baniyan tree at Krishnagiri - Uthangarai Main Road, the rider of the Hero Honda motorcycle bearing Registration No. TN 24 D 8029 owned by 2nd respondent, drove the same from Mathur to Uthangarai in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent sustained multiple injuries all over the body and immediately after the accident he was given first aid treatment at Government Hospital, Uthangarai. Thereafter he was taken to Government Hospital, Krishnagiri and he has taken treatment as inpatient for more than 10 days from 14.11.2008 and subsequently, he has taken private treatment till the filing of the claim petition. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

5. The 2nd respondent-owner of the motorcycle filed counter statement and denied all the averments made by the 1st respondent. The 2nd respondent denied the manner of accident as alleged by the 1st respondent. According to the 2nd respondent, while the rider of the motorcycle was riding the same cautiously by observing the road traffic rules, the 1st respondent, who was a dumb, crossed the road and invited the accident. Hence, the 2nd respondent is not liable to pay any compensation to the 1st respondent. The 1st respondent failed to prove his age, avocation, income, medical expenses incurred by him and the nature of injuries sustained by him. The quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6. The appellant-Insurance Company, being the insurer of the motorcycle owned by 2nd respondent filed separate counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent. According to the appellant, the 1st respondent only without hearing the horn given by the rider of the motorcycle crossed the road. On seeing this, the rider of the motorcycle applied sudden brake to avert the accident. But before the motorcycle came to halt, the 1st respondent came and had contact with the motorcycle and invited the accident. Hence, the accident has occurred only due to the negligence on the part of the 1st respondent and not due to the negligence on the part of the rider of the motorcycle. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. Further, the motorcycle was not insured with the appellant and the rider of the motorcycle was not possessing valid driving license at the time of accident. The appellant denied the age, avocation,



income, nature of injuries sustained, period of treatment and medical expenses incurred by the 1st respondent. The quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition as against the appellant.

7. Before the Tribunal, the brother of the 1st respondent was examined as P.W.1 and 9 documents were marked as Exs.P1 to P9. On behalf of the appellant, Dhivya and Murugan were examined as R.W.1 & R.W.2 and two documents were marked as Exs.R1 & R2. The disability certificate of the 1st respondent was marked as Ex.C1.

8. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle owned by 2nd respondent and directed the appellant to pay a sum of Rs.1,67,500/- as compensation to the 1st respondent.

9. To set aside the said award dated 14.08.2019 made in M.C.O.P.No.740 of 2014, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the rider of the motorcycle did not possess driving license at the time of accident. The Tribunal failed to consider the evidence of R.W.1 & R.W.2 examined on behalf of the appellant and also Exs.R1 & R2 filed by the appellant. The Tribunal failed to consider the evidence of R.W.1, an official from concerned RTO office and fastened the entire liability on the part of the appellant. The Tribunal ought to have exonerated the appellant from its liability. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

11. Though notice has been served on the respondents 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 and perused the entire materials on record.

13. It is the case of the appellant that the rider of the motorcycle, who was examined as R.W.2 did not possess driving



license at the time of accident. To prove the said contention, the appellant examined R.W.1, official from RTO, Krishnagiri. R.W.1 deposed as per the details available in their office records and submitted that there is no material for having issued driving license to R.W.2/rider of the motorcycle. R.W.1 also deposed that Motor Vehicle Inspector has stated that rider of the motorcycle did not produce the driving license at the time of inspection of the motorcycle. She further deposed that Motor Vehicle Inspector has not stated that the rider of the motorcycle did not possess driving license. There is no proof to show that the rider of the motorcycle did not possess driving license at the time of accident and that R.T.O Office did not issue any notice to R.W.2 to produce the driving license. It is pertinent to note that R.W.1 in cross examination has stated that it cannot be said that no license was issued to R.W.2, rider of the motorcycle. The appellant has also not issued any letter to owner or rider of the motorcycle to produce the driving license. In view of the above materials, the appellant has not proved that R.W.2/rider of the motorcycle did not possess driving license at the time of accident.

14.As far as quantum of compensation is concerned, in the accident the 1st respondent sustained multiple injuries all over the body. Immediately after the accident he was taken to Government Hospital, Uthangarai for first aid treatment and thereafter he was taken to Government Hospital, Krishnagiri and has taken treatment as inpatient for more than 10 days from 14.11.2008 and subsequently, he has taken private treatment till the filing of the claim petition. The Medical Board from Krishnagiri examined the 1st respondent and certified that 1st respondent suffered 30% disability and issued Ex.C1/disability certificate to that effect. The Tribunal following the judgment of this Court reported in 2013 (2) TNMAC 583, [National Insurance Company Limited Vs. G.Ramesh and another], awarded a sum of Rs.90,000/- (Rs.3,000/- X 30% of disability) for 30% of disability at the rate of Rs.3,000/- per percentage of disability and the same is not excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,67,500/- as compensation to the 1st respondent, which is not excessive warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,67,500/- together with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, 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.740 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.S.Vadivel, Advocate Sr.18147

C.M.A.No.4763 of 2019

vbm[co]
srg 23/09/2021