



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1082 of 2014

Rajendran

.. Appellant/Claimant

Vs.

1.B.R.Jayaprakash

2.The Branch Manager,

Bajaj Allianz General Insurance Company Limited,
No.105-A/107A, Cheers Plaza,
No.136, Residency Road,
Bangalore 25

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2008, made in M.C.O.P. No.649 of 2006, on the file of the Chief Judicial Magistrate Court, (Motor Accidents Claims Tribunal), Krishnagiri.

For Appellant : Mr.Mukund R. Pandiyan
for M/s.M.Sriram

For Respondents : Mrs.R.Sreevidhya for R2
No appearance for R1

J U D G M E N T

This appeal has been filed challenging the liability fixed on the 1st respondent and for enhancement of the compensation granted by the Tribunal in the award dated 30.06.2008, made in M.C.O.P. No.649 of 2006, on the file of the Chief Judicial Magistrate Court, (Motor Accidents Claims Tribunal), Krishnagiri.

2.The appellant/claimant, filed M.C.O.P.No.649 of 2006, on the file of the Chief Judicial Magistrate Court, (Motor Accidents Claims Tribunal), Krishnagiri, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.01.2005.



3. According to the appellant, on the date of accident, he was riding his cycle rickshaw from Sippayur to Krishnagiri, slowly and cautiously, observing the rules of the road. At that time, the rider of the Bajaj Boxer motor cycle bearing Registration No. TN-24-Z-5718 belonging to the 1st respondent drove the same in a rash and negligent manner and came from backside and dashed against the cycle rickshaw and caused the accident. In the accident, the appellant sustained head injury and fracture of both bones on his right leg and other multiple injuries all over the body. Hence, the appellant filed the said claim petition, claiming compensation against the respondents as owner and insurer of the vehicle respectively.

4. The 1st respondent, owner of the Bajaj Boxer motorcycle, remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent, the accident occurred due to rash and negligence on the part of the appellant. Further, the driver of the motorcycle did not possess valid driving license at the time of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. In any event, the total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1, examined one Dr. T.V. Gandhi as P.W.2 and marked 5 documents as Exs. P1 to P5. The 2nd respondent examined the 1st respondent as R.W.1, examined one Praveenkumar as R.W.2 and marked 4 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 rider of Bajaj Boxer motorcycle belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.52,000/-, as compensation to the appellant. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company as the driver of the motorcycle did not possess valid driving license at the time of accident.

8. Challenging portion of the award dismissing the claim petition against the second respondent/Insurance Company and not being satisfied with the amounts awarded by the Tribunal in the award dated 30.06.2008, made in M.C.O.P. No.649 of 2006, the appellant has come out with the present appeal.



WEB C

9.The learned counsel appearing for the appellant contended that the Tribunal, having rightly fixed the negligence on the part of the rider of the Bajaj Boxer motorcycle, erred in fixing entire liability on the 1st respondent, owner of the vehicle on the ground that the rider of the Bajaj Boxer motorcycle did not possess valid driving license at the time of accident. In the absence of any evidence by the 2nd respondent-Insurance Company to prove that the rider of the Motorcycle did not possess valid driving license, the Tribunal ought to have directed the 2nd respondent to pay the compensation at the first instance and recover the same from the 1st respondent. The appellant was a rickshaw driver and due to the injuries, he could not continue his work as he was doing earlier. Hence, the Tribunal ought to have granted compensation towards loss of earning capacity by adopting multiplier method. The Tribunal has not awarded any amount towards loss of amenities and loss of income. The total compensation awarded by the Tribunal under different heads is meagre and prayed for enhancement of the compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, after considering the entire materials, found that the rider of the Bajaj Boxer motorcycle did not possess valid and effective driving license to ride the two wheeler at the time of accident. Hence, the Tribunal rightly fixed the liability on the 1st respondent, owner of the vehicle and dismissed the claim petition as against the 2nd respondent-Insurance Company. There is no error in the finding of the Tribunal and prayed for dismissal of the appeal.

11.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.

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

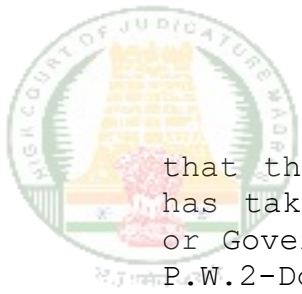
13.From the materials on record, it is seen that it is the case of the appellant that on the date of accident, while the appellant was riding his cycle rickshaw from Sippayur to Krishnagiri, the rider of the Bajaj Boxer motorcycle belonging to the 1st respondent drove the same in a rash and negligent manner at an uncontrollable speed, without minding the rules of the road and without sounding horn and came from back side and dashed against the cycle rickshaw and caused the accident. To



prove the same, the appellant examined himself as P.W.1 and marked the First Information Report as Ex.P1, which was registered against the rider of the Bajaj Boxer motorcycle. The 2nd respondent examined the 1st respondent as R.W.1 and one Praveen Kumar as R.W.2 and marked 4 documents as Exs.R1 to R4. Both R.W.1 and R.W.2 have not seen the accident and they are not eye-witnesses. The Tribunal considering the evidence of P.W.1, Ex.P1-FIR and in the absence of any contra evidence to disprove the evidence of P.W.1 and Ex.P1/FIR, rightly held that the accident occurred only due to rash and negligent riding by rider of Bajaj boxer motorcycle owned by the 1st respondent.

14.It is the case of the 2nd respondent-Insurance Company in the claim petition that rider of the Bajaj boxer motorcycle did not possess driving license to ride the two wheeler at the time of accident. In support of their contention, the 2nd respondent examined 1st respondent as R.W.1 and one Praveen Kumar was examined as R.W.2. From the evidence of R.W.1, it is seen that one Kanagavel, who drove the Bajaj boxer motorcycle at the time of accident, died in the accident and the 1st respondent did not produce the driving license of the said Kanagavel. The Tribunal considering the evidence of P.W.1 and Ex.P1 and the failure on the part of the 1st respondent to produce the driving license of the rider of the Bajaj boxer motorcycle, directed the 1st respondent to pay the compensation to the appellant and dismissed the claim petition against the 2nd respondent-Insurance Company, as the rider of the Bajaj boxer motorcycle did not possess valid driving license. Even if rider of the Motorcycle did not possess driving license to drive the Motorcycle, the 2nd respondent-Insurance Company cannot be exonerated absolutely from its liability. 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 from its liability. 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 2nd respondent-Insurance Company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent.

15.As far as quantum of compensation is concerned, the Tribunal rejected Ex.P5/Disability Certificate on the ground



that the appellant did not produce any records to show that he has taken treatment as in-patient in Government Hospital, Salem or Government Hospital, Nallampatti. The Tribunal also held that P.W.2-Doctor is a stock witness and rejected the evidence of P.W.2. It is the contention of the appellant that in the accident he suffered grievous injuries and fracture and has taken treatment as in-patient in Government Hospital, Salem and continued his treatment at the Government Hospital, Nallampatti. To prove the same, he examined one Doctor as P.W.2. P.W.2/Doctor deposed that due to the fracture, the appellant suffered 40% disability and facing difficulties in day-to-day activities and issued disability certificate to that effect. The 2nd respondent has not let in any contra evidence to disprove the disability certificate issued by P.W.2/Doctor and evidence of P.W.2/Doctor. In the cross examination, P.W.2/Doctor denied the suggestions that if the appellant taken allopathy treatment, the disability would be reduced. In the absence of any contra evidence let in by the respondents to the evidence of P.W.2-Doctor, the finding of the Tribunal rejecting the Disability Certificate is erroneous. Considering the evidence of P.W.2-Doctor and Ex.P5/Disability Certificate, this Court is of the view that the appellant is entitled to compensation for 40% disability at the rate of Rs.1,000/- per percentage. Hence, a sum of Rs.40,000/- [Rs.1,000/- x 40%] is awarded towards disability. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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.	Pain and sufferings	45,000/-	45,000/-	Confirmed
2.	Mental agony	5,000/-	5,000/-	Confirmed
3.	Transport expenses	1,000/-	1,000/-	Confirmed
4.	Extra nourishment	1,000/-	1,000/-	Confirmed
5.	Disability	-	40,000/-	Granted
	Total	52,000/-	92,000/-	Enhanced by Rs.40,000/-



16. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.52,000/- is hereby enhanced to Rs.92,000/- 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, along with interest and costs from the date of filing of the appeal, 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.649 of 2006, at the first instance and recover the same from the 1st respondent. The 1st respondent is directed to deposit the interest payable on the amount awarded by the Tribunal from the date of petition till the date of filing of the appeal to the credit of M.C.O.P.No.649 of 2006. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, 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(I)

//True Copy//

Sub Assistant Registrar

Vkr

To

1.The Chief Judicial Magistrate Court,
(Motor Accidents Claims Tribunal),
Krishnagiri.

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.69481

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.69865

C.M.A. No.1082 of 2014

BS (CO)

GN(16/03/2022)